FATWA

# FATWA ON BANKING

## AND THE USE OF INTEREST RECEIVED ON BANK DEPOSITS

BY UMAR IBRAHIM VADILLO

October 2006

# Table of Contents

# 1. Introduction

Riba (usury) has been clearly and explicitly prohibited in the Qur'an and Sunna. Allah and His Messenger, sallallahu alayhi wa sallam, have declared war on those who do not abstain from it.

These are some of the relevant ayats regarding Riba. Allah says in the Qur'an:

> **Those who practice riba will not rise from the grave**
> **except as someone driven mad by Shaytan's touch.**
> **That is because they say, "Trade is the same as riba."**
> **But Allah has permitted trade and He has forbidden riba.**
> **Anyone who receives a warning from his Lord and then desists,**
> **can keep what he received in the past and his affair is up to Allah.**
> **But any who return to it will be the Companions of the Fire,**
> **remaining in it timelessly, forever.**
>
> **Qur'an (2, 274)**

> **Allah obliterates riba but He makes sadaqa grow in value!**
> **Allah does not love any persistently ungrateful wrong-doer.**
>
> **Qur'an (2, 275)**

> **O you who believe! Show fear of Allah**
> **and forgo any remaining riba**
> **if you are believers.**
>
> **Qur'an (2, 277)**

> **If you do not, know it means war from Allah and His Messenger.**
> **If you turn in repentance you may have your capital,**
> **without wronging and without being wronged.**
>
> **Qur'an (2, 278)**

> **O you who believe! Do not feed on riba,**
> **multiplied and then remultiplied.**
> **Show fear of Allah**
> **so that perhaps you may be successful.**
>
> **Qur'an (3,130)**

> **Because of wrongdoing on the part of the Jews,**
> **We made unlawful for them some good things**
> **which had previously been lawful for them;**
> **and because of their obstructing many people from the way of Allah,**
> **and because of their practising riba when they were forbidden to do it,**
> **and because of their consuming people's wealth by wrongful means.**
> **We have prepared a painful punishment**
> **for those among them who reject.**
>
> **Qur'an (4, 159-160)**

Rasulullah, sallallahu alayhi wa sallam, said the following concerning the gravity of Riba:

Abu Huraira said that the Messenger of Allah, sallallahu alayhi wa sallam, said: “Riba is of seventy different kinds, the least grave being equivalent to a man marrying (i.e. having sexual intercourse with) his own mother.”

(transmitted by Ibn Majah, Baihaqi)

Abdallah ibn Hanzala reported that the Messenger of Allah, sallallahu alayhi wa sallam, said: “A dirham of Riba, which a man receives knowingly, is worse than committing adultery thirty-six times.” (Ahmad) Baihaqi transmitted it, on the authority of Ibn Abbas, with the addition that the Prophet, sallallahu alayhi wa sallam, continued to say: “Hell is more fitting for him whose flesh is nourished by the Haram.”

(transmitted by Ahmad)

Abu Huraira reported the Messenger of Allah, sallallahu alayhi wa sallam, as saying: “On the night I was taken up to heaven I came upon people whose bellies were like houses which contained snakes which could be seen from outside their bellies. I asked Jibril who they were and he told me they were people who had consumed Riba.”

(transmitted by Ahmad, Ibn Majah)

Samura bin Jundab reported that the Messenger of Allah, sallallahu alayhi wa sallam, said: "This night I dreamt that two men came and took me to a holy land whence we proceeded on till we reached a river of blood, where a man was standing, and on its bank was standing another man with stones in this hand. The man in the middle of the river tried to come out, but the other threw a stone at his mouth and forced him to go back to his original place. Whenever he tried to come out the other threw a stone at his mouth and forced him to go back. I asked: "Who is this?" I was told: "The person in the river was one who consumed Riba."

(transmitted by Bukhari)

The Messenger of Allah, sallallahu alayhi wa sallam, cursed the one who takes Riba, the one who gives Riba, the one who records the transaction and the two witnesses thereof. He said they are equally guilty.

(transmitted by Muslim)

There are of course alternatives to Riba. As Rumi once explained, "What is Halal is possible." The hypocrite – Rumi also said – is the one who says, "What is Halal is not possible." To establish the Halal is an imperative for every Muslim. Among the Islamic alternatives for Riba-based transactions are Shirkat (or Musharakah) and Qirad (or Mudarabah). These are the two main business contracts in Islam. Their principles are known. The problem is their application in an environment that is not suitable for them.

**The answer to this problem is not to alter the contracts but to alter the environment.**

Herein lies the main difference with our brothers in Islamic Banking. They are preserving the capitalist environment and tools at the

expense of the conditions imposed by the Shari‘ah. They are doing this wrongly in the name of ijtihad and darurah.

We, on the other hand, stand for the re-establishment of the Islamic environment through the restoration of some missing key tools and institutions of trading, which are necessary for Shirkat and Qirad to operate properly.

## 2. The Issue

Many Muslims have interest-bearing accounts. Interest is without any doubt Riba and therefore Haram. What are the circumstances in which we find ourselves that force us to have bank accounts even though we know bank accounts are Haram? How is it justified? Most people claim that this is a case of darurah, that is, extreme necessity. Darurah is a legal instrument applicable in cases of extreme necessity or vital interest by which a person is allowed to act in a manner that would otherwise normally be forbidden. The most critical characteristic of darurah is that it is only a temporary measure. If you find yourself in the desert and all you have is a pig to eat, then it is fard (obligatory) to kill and eat the pig. Eating the pig is not Halal, it is fard. It is a very different thing to start farming pigs while still claiming darurah. Once we find ourselves in a situation of darurah, it is obligatory to do everything in our power to move away from that situation. It is not allowed to dwell in the situation for ever.

The issue we are concerned with here is “what to do with the interest the Muslims are receiving on their bank deposits?” What is the correct way of dealing with the interest, given the present circumstances?

Most people decide between the following options:

1] Keep the interest as part of the darurah situation
2] Give the interest to charity
3] Return the interest to the bank directly or arrange a special non-interest account.

What all these options have in common is that they do not change the status of darurah. They simply perpetuate the condition. Options 1 and 2 at least help the account holder or the charity beneficiaries; but option 3 only enriches the bank, making it the worst possible option.

There is a fourth option which is the one we are proposing: to use the interest to change the condition of darurah.

**When a darurah status is claimed, the imperative action is to change the condition not to perpetuate it.** Therefore the priority is to change the condition of darurah. The interest can contribute to changing the status in which we find ourselves obliged to use the bank. How? By establishing the appropriate alternative to the banking system. Not another bank, but an institution that can allow payments without resorting to banking activities. That institution should allow us to perform payments and savings in an Islamic manner.

Darurah relates to our economic environment. Therefore to understand our problem it will not be sufficient to focus on the commercial transaction, we will need to have a wider look, examining the conditions that surround the commercial transaction. Thus, we need to investigate how banking institutions have become almost a monopoly in the creation and handling of money. We need to look at the nature of the banks, and also at the nature of the credit-money which we use. Finally we need to understand what money is in Islam, and how we can re-establish an Islamic economic framework in which banks will cease to be a necessity for us, while we remain fully capable of satisfying all our economic needs.

The key to understanding our present economic situation is the concept of Riba in the Shari'ah. Without a proper understanding of what is Haram we will not be able to make a correct judgement. To understand Riba we will need to eliminate some common misunderstandings, such as making interest identical to Riba – when in fact the two concepts are not the same. Making these two concepts identical is part of the confusion that reigns today in the common discourse on Riba. Expressions such as 'interest-free' or 'zero-interest' do not mean that the transaction is free of Riba. Such expressions are deceptive, misleading and ultimately have served to lure Muslims into

forbidden practices. We will look at this matter in the section called ‘Understanding Riba’.

Another important matter is to clearly state that Islamic Banking is Haram, just as all other commercial banks are Haram without exception. Islamic Banks practice Riba in the same way that other banks do, except that the differences are purely cosmetic. They mislead common people by the use of Arabic names and the misrepresentation of commercial contracts as well as the introduction of certain forbidden practices such as ‘two transactions in one’, which are usually not known to be Haram by most people. Islamic Banks dwell on the exceptionality of darurah in order to justify their own interpretation of the Shari’ah, which validates banking practices. Islamic Banks do not intend to change or eliminate the situation of darurah, because such a change would imply the end of their justifications. We will examine this matter in greater detail later when we look at the methodological route used by modernist scholars in order to alter the definition of Riba, therefore allowing them to accept the institutions of banks and paper money.

Ultimately we must understand the importance of what is Halal, what is the Islamic way of doing things. We have lost our Islamic Mu’amalat and the only way to restore the practice of the Shari’ah is to restore some critical aspects of the Islamic economic infrastructure that make the Mu’amalat viable. Therefore the matter must ultimately result in the restoration of our own economic model. Within an Islamic model we have the resources to restore the right way of trading and eliminate Riba form our lives.

# 3. Understanding Riba

## 3.1 A world shaped by Riba

It is generally assumed that from the point of view of material wealth, things have never been better than they are today. This is assumed, despite just having traversed the most murderous century in human history, which saw for the first time the use of weapons of mass destruction on civilian populations, the colossal annihilation of the eco-system and fauna, and the largest numbers of starvation victims known in history. All past and present miseries are forgotten before the general assumption that the average person today enjoys a standard of living not equalled in any other time. However, it has not been the same for all the people of the world. While a material improvement has been achieved for a relatively small portion of mankind, the bottom half still lives below the poverty-line of 2 USD a day, and earn less collectively than the 387 largest individual earners. This disequilibrium in wealth goes hand in hand with a corresponding political and military imbalance that has turned one nation in particular into the police-ruler of the world.

During this period of a massive shift of wealth to a small corner of the world, the Muslims have lost an immense part of their past economic and political status. The political unity represented by the Khalifate, which granted Muslims a voice in world affairs, was devastated, and instead a plethora of tiny nations emerged under the auspices and new legal frame of the United Nations. Large parts of our population belong to the bottom half of world earners, and our combined Gross Domestic Product does not reach one tenth of the GDP of the USA. Politically divided, and losers in the economic share-out, Muslims face only the prospect of being underdogs in the present economic system. Under this regime a continuous erosion of our social and cultural life is

inevitable, which in turn results in the increased anger and frustration of our youth.

This present system of economic disequilibrium is self-preserved by diverting people's attention away from economic matters and towards political matters. The economic system which causes the imbalance is taken for granted, and individual political tyrants become the focus of political struggle. Under these circumstances the economic system remains unquestioned and therefore its continuation is guaranteed.

At its core, this system of disequilibrium which we call capitalism is based on Riba. Riba is in itself disequilibrium. Mechanised usury through the banking system has turned a criminal contract into a means of economic domination. As long as we remain slaves of Riba, our Muslim nation will remain enslaved.

A society which misunderstands the dynamics of the world will find it difficult to focus on establishing its goals. These are swept away in the emotion of the moment. And so, acts which are intended 'to do good' are lost to a lack of direction. Under such circumstances, no amount of effort will prove fruitful.

## 3.2 What is Riba?

Understanding Riba is essential to understanding capitalism and thus to comprehending the economic environment in which we operate. The Islamic understanding of Riba opens the path to restoring our own Mu'amalat and thus creating the tools that can overcome the present system. Riba is not just negative. It opens the path to the positive construction of the Halal. Only while we remain confused between the Halal and the Haram do we perpetuate the present situation.

The basis of the argument against Riba is what Allah says in the Qur'an (Surat al-Baqara, 274):
“Allah has permitted trade and forbidden Riba.”

Riba represents the opposite of trading, it is the corruption of trading. There cannot be trading with Riba, nor Riba with trading. Yet, Riba has become the core of today’s face of kufr: capitalism. For this reason, Riba is the most important political issue facing our Muslim nation today. Riba affects every aspect of our life and it can be traced back to two main institutions: the Bank and the State. Despite its importance, most Muslims’ understanding of it remains superficial. Most people simply think that Riba is merely interest. The reality of Riba is a much more complex affair. This misunderstanding is not just a miscalculation; it is the product of a mis-education and indoctrination which has resulted from two phenomena: one, the destruction of the political power of the Khalifate, and two, the process of the so-called ‘Islamic reform’ which followed. This misunderstanding opened the gates to the ‘Islamisation’ of the most important institution of capitalism: the bank. What the open market-place is to trading, the bank is to Riba. A ‘reformed Riba’ was to allow the new promoters of the ‘Islamic Bank’ to justify their actions. It is for this reason essential to return to a correct understanding of this key term in the Fiqh, which can allow us to discern what is Haram and what is Halal. This is crucial to overcoming capitalism and its illusion of power.

This brief introduction will try to outline as plainly as possible the issue of Riba in Islamic Law, and undo the misunderstanding created by the ‘reformers’ and modernist scholars.

Riba literally means ‘excess’ in Arabic. Qadi Abu Bakr ibn al-Arabi, in his ‘Ahkamul Qur’an’, defines it as: ‘Any excess between the value of the goods given and their counter-value (the value of the goods received).’ This excess refers to two matters:

1] An extra benefit arising from unjustified increase in the weight or measure, and

2] An extra benefit arising from unjustified delay.

These two aspects have led our scholars to define two types of Riba. Ibn Rushd said:

“The jurists unanimously agreed about Riba in buyu’ (trade) that it is of two kinds: deferment (nasiah) and stipulated disparity (tafadul).”

That is to say, there are two types of Riba:

1] Riba al-Fadl (excess of disparity)

2] Riba al-Nasiah (excess of deferment)

Riba al-fadl refers to quantities. Riba an-nasiah refers to time delay.

Riba al-fadl is very easy to understand. In a loan, Riba al-fadl is the interest that is overcharged. But in general it represents when one party demands an additional increase to the counter-value. One party gives something worth 100 in exchange for something worth 110. Riba al-fadl also refers to the forbidden case in which two sales transactions are linked by a single contract (known as ‘two transactions in one’), in which one party is obliged to sell something at one price and to resell it after a time to the original seller for a decreased value. As a matter of fact, this is only a subterfuge to disguise a loan with interest under the pretence of a sale. Nobody needs this subterfuge today because you can get the loan directly from the bank. But the Islamic Banks have resorted to this old trick to deceive their customers under the misinterpreted name of ‘Murabaha’.

Understanding Riba an-nasiah is more subtle. It is an excess in time (delay) artificially added to the transaction. It is an unjustified delay. This refers to the possession (‘ayn) and its non-possession (dayn) of the medium of payment (gold, silver and foodstuff – which was used as money). ‘Ayn is tangible merchandise, often referred to as cash. Dayn is a promise of payment or a debt, or anything whose delivery or

payment is delayed. To exchange (safr) dayn for ‘ayn of the same genus is Riba an-nasiah. To exchange dayn for dayn is also forbidden. In an exchange it is only allowed to exchange ‘ayn for ‘ayn.

This is supported by many hadith on the issue. Imam Malik related:

“Yahya related to me from Malik that he had heard that al-Qasim ibn Muhammad said, ‘Umar ibn al-Khattab said, “A dinar for a dinar, and a dirham for a dirham, and a sa' for a sa'. Something to be collected later is not to be sold for something at hand.”’”

“Yahya related to me from Malik that Abu'z-Zinad heard Sa'id al Musayyab say, ‘There is usury only in gold or silver or what is weighed and measured of what is eaten and drunk.’”

The Hanafi scholar Abu Bakr al-Kasani (d. 587H) wrote:

“As for Riba al-nasa’ it is the difference (excess) between the termination of delay and the period of delay and the difference (excess) between the possession (‘ayn) and non-possession in things measured and weighed with different genera as well as in things measured and weighed with a uniformity of genera. This is according to ash-Shafi’i (Allah bless him), it is the difference between the termination of the period and the delay in foodstuff and precious metals (with currency-value) specifically.”

Riba an-nasiah refers particularly to the use of dayn in the exchange (sarf) of the same genera. But the prohibition is extended to sales in general when the dayn representing money overpasses its private nature and replaces the ‘ayn as medium of payment.

Imam Malik, may Allah be merciful to him, illustrates this point in his ‘Al-Muwatta’:

“Yahya related to me from Malik that he had heard that receipts (sukukun) were given to people in the time of Marwan ibn al-Hakam for the produce of the market of al-Jar. People bought and sold the receipts among themselves before they took delivery of the goods. Zayd ibn Thabit, one of the Companions of the Messenger of Allah, may Allah bless him and grant him peace, went to Marwan ibn Hakam and said, ‘Marwan! Do you make usury Halal?’ He said, ‘I seek refuge with Allah! What is that?’ He said, ‘These receipts which people buy and sell before they take delivery of the goods.’ Marwan therefore sent guards to follow them and take them from people’s hands and return them to their owners.”

Zayd ibn Thabit specifically calls Riba those receipts (dayn) ‘which people buy and sell before taking delivery of the goods.’ It is allowed to use the gold and silver or food to make the payment, but you cannot USE the promise of payment. In it there is an excess that is not allowed. If you have dayn, you have to take possession of the ‘ayn it represents and then you can transact. You cannot used the dayn as money.

In general the rule is that you should not sell something which is there, for something which is not. This practice is called Rama’ and it is Riba.

Imam Malik: “Yahya related to me from Malik from ‘Abdullah ibn Dinar from ‘Abdullah ibn ‘Umar that ‘Umar ibn al-Khattab said: ‘Do not sell gold for gold except like for like. Do not increase part of it over another part. Do not sell silver for silver except for like, and do not increase part of it over another part. Do not sell some of it which is there for some of it which is not. If someone asks you to wait for payment until he has been to his house, do not leave him. I fear rama’ for you. Rama’ is usury.’”

Rama’ is today the common practice in all our markets. Dayn currency (paper money, receipts) has replaced the use of ‘ayn currency (Gold

Dinar, Silver Dirham). This practice is what Umar ibn al-Khattab meant when he said "I fear rama' for you."

Selling with deferment is not restricted to metals, it also includes food. Malik said, "The Messenger of Allah, may Allah bless him and grant him peace, forbade selling food before getting delivery of it."

Therefore, what is prohibited in Riba an-nasiah, is the addition of an artificial delay that does not belong to the nature of the transaction. What does 'artificial' and 'the nature of the transaction' mean? It means that every transaction has its own natural conditions of timing and price.

Riba al-fadl refers to quantities. Riba an-nasiah refers to time delay.

To understand what is justified and what is not justified, one has to understand the different nature of each transaction, in particular those transactions that involve the same genus (the same goods are given and received), such as loans, exchange and rental:

- A **loan** involves deferment but not quantity disparity. One person gives an amount of money, and after a period of time (deferment) the person returns the money without increase. The excess in time is justified and is Halal, but disparity is unjustified and is Haram. That type of unjustified excess would be Riba al-fadl.

- An **exchange** involves no deferment and no disparity. One person gives an amount of money and without deferment the equivalent is given. Deferment is unjustified in an exchange. If you want to delay the payment, you have to make a loan, you cannot obtain a loan disguised as a 'delayed exchange'. That type of unjustified excess would be Riba an-nasiah.

- A **rental** involves both deferment and disparity and it is Halal. When you rent a house, you take possession of the house and you

return it after a time (deferment) and in addition you make an extra payment, the rent (disparity). These two excesses both in time and quantity are justified and they are Halal. You can only rent merchandise that can be hired. You can hire a car, a house or a horse. But you cannot hire money or food stuff (fungible goods). To pretend to hire money is to corrupt the nature of the transaction and it becomes Riba. What type of Riba is renting money? Riba al-fadl, because the renting of money is the same as adding a disparity in a loan.

**In the case of a sale** that involves the exchange of goods of different genus, deferment is Halal, and disparity is accounted for in a different manner. How do you determine disparity in a sale of goods of different genus? The disparity is determined by the difference between the price offered on spot sales and delayed sales. This is called in the Fiqh the **stipulation of two prices** or **'two sales in one'**. The spot price is considered the price; and the excess occurs when there is an increase (in relation to the spot price) in the price offered in delayed terms. This can happen in the following cases:

- offering an increased price if the good are purchased on delayed terms; or
- offering a discount if the buyer pays on the spot; or
- selling only on delayed terms and denying the possibility of purchasing on the spot (thus hiding that there is an increase – as it happens in many of the 0% finance offers that we see today).

A complete discussion of this topic follows later. We will simply outline two cases:

**1]** When the seller says "I sell at this price if you pay in cash, and at this other one (higher) if you pay in delayed terms."

**2]** When the seller makes a salam (a sale with delayed payment, which is Halal) and at the time when the money is due he says to the buyer (who might not be able to pay): "You can delay it further if you

pay an excess (disparity);" and also when the seller says to the buyer: "If you pay before the end of the terms, I will offer you a discount (disparity)." This is the type of Riba known as Riba al-jahiliyah. What type of Riba is applicable here? Riba al-fadl – because in sales the source of unjustified excess is disparity.

Ibn Rushd wrote:
"As for usury in sales, the ulama are in agreement that it is of two types: deferred payment (nasiah) and disparity (tafadul) – except what has been transmitted from Ibn 'Abbas, who reported that the Prophet, may the peace and blessing of Allah be upon him, said: "There is no usury except in deferred payment." The majority of the fuqaha, however, have concluded that usury does exist in these two types because this has been affirmed in other statements from him, may the peace and blessings of Allah be upon him."

"The four sections to which the law of usury may be reduced are (1) things in which neither disparity nor deferment is permitted; (2) things in which disparity is permitted but deferment is not; (3) things in which both are permitted; and (4) what constitutes a single genus."

Thus every transaction has its conditions relating to its nature. You cannot take the conditions of one type of transaction and try to apply them to the other, without corrupting the transaction. To add unjustified conditions (also excess) to a transaction is Riba.

Since dayn is in itself a deferment, the use of dayn is restricted to private transactions and it is prohibited as a general means of payment (money). While dayn *per se* is Halal, it is not Halal to use it as money. Dayn is a private contract between two individuals and must remain private and between them. The transfer of dayn from one person to another can be done Islamically, but only by the elimination of the first dayn and the creation of a new one. The dayn cannot circulate independently from what it represents. The owner must take possession of the goods and liquidate the dayn. Dayn cannot be used

in an exchange and it cannot be used as a means of payment. It is specifically forbidden to use dayn to pay Zakat.

# 4. The Misunderstanding of Riba

## 4.1. Religious reformism and capitalism

Capitalism overrides religion rather than interacting with it. Its supremacy in present society is so absolute that expressions like taxation and interest rates command more certainty than the existence of Allah. Religions in the process have had to bend their supposedly capricious laws in order to submit to the rationale of the banking order. Coming out of revolutions, wars and economic disasters, capitalism has managed to impose its structures all over the world. Its success is so total that it has managed to eliminate any intellectual resistance. The disappearance of the kings (representing the link to traditional law) and the arrival of democracy provided the fertile grounds for this massive re-shaping of the world within a capitalist rationale.

The full extent of this accomplishment transformed the previously untouchable domain of religion. Capitalism's rationale entered into the judgment of religion to the degree that capitalism was accepted as an 'endowment of God': a self-evident evolution of human society, just like the locomotive or the radio. The key to this effort was the adaptation of the traditional prohibition of usury through a careful redefinition of the term. This 'conversion' to capitalism was completed in christianity during the complex process of Reform or Protestantism. The principal results of the conversion were the 'christianisation of banking' and the reduction of Canon Law to personal puritan morality. Muslims also had their own 'protestant' reform. Our reformers adopted the same pattern; the adoption of puritan morality cantered particularly on sexual behaviour, and the 'Islamisation of banking'.

What we call modernism in Islam is similar to what Protestantism is to the christian world. The two phenomena share the same mould and the same accomplishment with regard to capitalism. At the centre of this issue was a redefinition of the meaning of usury that would allow banking to be accepted as part of the religion.

Two things were required for banking to be religiously accepted:
1] Acceptance of the interest charged on their loans, either explicitly or by disguise.
2] Acceptance of fractional reserve banking, that is, the system of the creation of promissory notes as substitutes for specie (originally, gold and silver).

Canon Law, as inherited from scholastic writers and the fathers of the christian church, regarded the matter of usury as being almost identical to interest. This interpretation was already a departure from the most comprehensive Aristotelian 'paradigm' that demanded that the value and the counter-value must be identical. The Aristotelian view was gradually abandoned in favour of a simpler and more practical definition of 'usury as interest'. Finally the Protestant revolution redefined usury from being any interest (independent of the amount) to only 'excessive interest'. The Protestant interpretation consented that any interest that was in accordance with the market rate was permissible, and only the interest that was in 'excessive' disparity to the market was considered usury. But in practice, without an upper limit beyond which people can agree that usury is taking place, the definition has proved pointless.

The Aristotelian definition offers very close parallels to the Islamic view. Qadi Abu Bakr ibn al-'Arabi defines usury as: "Any unjustified increment between the value of the goods given and the counter-value." The general idea is that although individuals have subjective and distinct appreciations of goods, in a just transaction there must be equivalence in their single (objective as opposed to subjective) exchange value. Economists like Bentham argued against the

Aristotelian view on the basis of the preference of subjective value (which was seen as the real value). From the point of view of the subjective value the Aristotelian 'just exchange' does not make sense since all the exchanges are by that definition non-equivalent. This is because from a subjective perspective the parties involved in the exchange always expect a higher 'utility' (subjective value) from the goods received than from the ones given. Thus, from a utilitarian perspective, "trade is as inequitable as usury", which is like saying "trade is the same as usury". And Allah the Exalted has warned us of the people who say "trade is the same as usury" (Qur'an 2:274).

After Bentham's utilitarianism, all interest in whatever form was considered permissible. The economic thinking that followed was grounded upon Bentham's 'permissibility of usury'. Furthermore, from this utilitarian perspective not only is usury accepted but the original idea of equivalence is no longer relevant and is therefore ignored. This explains the incapability of economists to understand the Islamic definition of Riba, which is based on the intrinsic equivalence of a just transaction. It leaves economists in pure perplexity when it comes to understanding the Islamic sense of equivalence, as expressed in sentences such as "gold for gold, hand to hand, equal for equal." The 'perplexity about equivalence' is a factor common to all economists.

In Islam the word for usury is Riba. The meaning of Riba in the Shari'ah has a more detailed and comprehensive meaning than the in christian Canon Law. Aristotelian equivalence is expanded and exemplified in the Shari'ah. The Shari'ah offers a complete understanding of the commercial transaction, and by default of Riba. This expanded understanding includes a detailed explanation of the meaning of excess in its two forms: disparity and deferment. By contrast the understanding of usury in the christian world is more or less defined by interest only. Islamic Law is more comprehensive and clearer. For example, in certain transactions in which it is not justified, the introduction of an artificial (unjustified) deferment is seen as an excess, and therefore a cause of Riba. This form of usury has escaped

all the christian scholars of the past. This gap in the christian understanding was to have important consequences in how usury would eventually penetrate in the christian world through the means of banking and particularly the use of promissory notes (in themselves a means of deferment). We want to emphasise the critical importance of Riba an-nasiah as a means of recognising a significant form of Riba which escaped christian scholars.

## 4.2 The Islamic Reformers

In Egypt, during the latter part of the XIX century, a group of pseudo-scholars started their own Islamic version of a Protestant reformation. Among other things they tried to change the definition of Riba in order to accommodate the banking practices of their day. From Muhammad ‘Abduh to the modern pro-banking scholars there runs an un-interrupted school of teachers and students, one which has added new elements to the original Islamic definition, and subtracted existing elements. This school we call modernism. Their final accomplishment was the creation of the Islamic Bank.

The inspiration behind the modernist movement is said to have been Jamal-ud-Din al Afghani (1839-1897), while its brain was Muhammad ‘Abduh (1845-1905), and the one who propagated it was Rashid Reda (1865-1935). It first appeared as a rejection of Western colonialism, but its emotional rejection of the West was accompanied by an indiscriminate and equally intensive admiration of the West.

Because of his position as Grand Mufti of Egypt – a position granted to him in 1899 by Lord Cromer, British Governor of Egypt – Muhammad ‘Abduh was the most damaging of all. His first Fatwa as Grand Mufti stated: “Interest in saving funds is allowed”. He wrote (5 December 1903):

“The stipulated usury is not permissible in any case; whereas the Post Office invests monies taken from the people, which are not taken as loans based on need, so it would be possible to apply the investment of such monies on the rules of a partnership in commenda.”*
[*commenda is similar to Qirad]

(*Al-Manar*, vol. VI, part 18, p. 717)

It is important to note that while he denounced Riba he accepted the banks. This is a key motif of all posterior modernist scholars. With this judgment he opened the door to the acceptance of banking in Islamic Law. Although he never formulated the idea of an Islamic Bank – he did not see it as necessary to call it Islamic – he established the basis on which later modernist scholars would construct this far-fetched formulation. The basis was re-interpreting interest as a type of profit, such as in Shirkat or Qirad. This critical reinterpretation was achieved by the introduction of a set of artificial definitions and deceptive schemes.

Muhammad Rashid Reda was the founder of the magazine *Al-Manar*, which was distributed all around the Muslim World. He participated in the same constitutionalist and anti-Osmanli circles as Al-Afghani and ‘Abduh. He opposed the traditional Madhhabs to impose his own opinions. He also bitterly opposed Sufism. His opinions on the West and Riba are clearly exposed in his writing:

“There is nothing in our religion which is incompatible with the current civilisation, especially those aspects regarded as useful by all civilised nations, except with regard to a few questions of usury [Riba] and I am ready to sanction [from the point of view of the Shari’ah] everything that the experience of the Europeans before us shows to be needed for the progress of the state in terms of the true Islam. But I must not confine myself to a school of law, only the Qur'an and the authentic Hadith.” (*Al-Manar*, vol. XII, p. 239)

The expression "except with regard to a few questions of usury [Riba]" meant that, for example, he saw nothing wrong with taking up a life insurance policy (*Al-Manar*, vol. XXVII, p. 346, also vol. VII, p. 384-8, and vol. VIII, p. 588). He also decried the traditional jurists' misuse of Qiyas to extend to the area of prohibition on taking interest on capital and suggests that the taking of interest on monies left in the bank or post office does not come under the prohibited usury. (*Al-Manar*, vol. VII, p. 28).

Rashid Reda created a new classification of Riba that has become paramount for all modernist scholars ever since. Reda made a distinction in the legal treatment of what he called the "Riba of the Qur'an" and the "Riba of the Sunna". Reda maintained that the primary form of Riba was the one prohibited by the Qur'an, and that this prohibition is to be maintained at all times. The texts of the Sunna, on the other hand, prohibit a lighter or secondary type of Riba – according to him – which is generally prohibited but may be permitted in case of necessity (darurah).

He essentially deprived Riba an-nasiah of its true meaning and reduced it to something else. First, he maintained that the Riba prohibited in the Qur'an was the Riba known as 'Riba al-jahiliyah' (when a person did not pay his due after the stipulated time, the seller would increase the price) which he wrongly equated with Riba an-nasiah. Second, he incorrectly assumed that Riba an-nasiah referred only to loans, and also that it was only Haram when it involved compound interest, and therefore that single interest was excluded from the prohibition. He therefore concluded that simple interest charged or paid by banks was not prohibited by the provisions of the Qur'an at all, nor by the Sunna.

He also maintained that the remaining prohibition from the Sunna referred to sales, in particular to barter exchange. And he wrongly assumed that the Riba of sales and barter was Riba al-fadl. For example, if two persons exchange gold with each other, the amount of

gold must be equal in weight on both sides and the two quantities must change hands on the spot, at once. He argued that unlike the Riba al-jahiliyah, this type was not known to the Arabs, since it was difficult to conceive of why two persons would exchange equal quantities of the same commodity at once. Here he showed his "perplexity about equivalence" and consequently an ignorance of the full extent of the issue of deferment. Thus he saw Riba al-fadl as being part of the abandoned practice of barter when people would exchange gold for gold (and similar), yet – he argued – it is not practiced any more.

The famous hadith of 'hand to hand' and 'equal for equal' referring to Riba has not been understood by the modernist scholars. They could not understand the relevance of the argument and the form in which it is described. Gold for gold, equal for equal and hand to hand, is a description of the balance of the transactions. 'Equal for equal' refers to the equivalence in the quantities which refers by default in certain transactions to Riba al-fadl; and 'hand to hand' refers to the immediateness of the transaction which refers by default in certain transactions to Riba an-nasiah. It is a statement which specifically prohibits the possibility of exchanging 'gold which is not present' (dayn) for 'gold which is present' ('ayn). This is very relevant because it is how Muslims got cheated away from their gold – by exchanging it for false promises of gold (the original form of paper money). It follows that in order to make paper money Halal, the modernist scholars had to ignore the relevance of this hadith and this formulation.

The aforementioned hadith refers specifically to the exchange of Dinars and Dirhams of different denominations, and implies the impossibility of using promises of payment in the exchange. Both cases are relevant and important to us.

In conclusion, Reda's views were:

A] Riba an-nasiah was only Riba al-jahiliyya. And only compound interest was forbidden by it.

B] Riba al-fadl was relative to the exchange. It was secondary in nature and it could be accepted in case of necessity (darurah).

This in turn produced the following confusion:
1] Riba an-nasiah occurs in the excess disparity (tafadul) that takes place in a transaction in which there is delay – such as loans.
2] Riba al-fadl occurs in the excess disparity (tafadul) that occurs in a transaction in which there in no delay.

According to this view both types of Riba are created by the excess disparity (tafadul) which we call Riba al-fadl. Therefore, in fact, they did not see, or did not want to see, the case of Riba created by deferment (nasa'), which we call Riba an-nasiah.

## 4.3 The followers of Reda

The followers of Reda basically adopted the same classification but differed with him on the issue of compound interest. They agreed that single interest was also Haram, but they agreed that darurah can be applied. And they saw Riba al-fadl as being secondary, related to what they saw as barter. Later modernist scholars filled the vacuum created by their definition of Riba al-fadl by referring to monopoly, monopsony and the rigging of prices in the market in general.

The truth is that both Riba an-nasiah and Riba al-fadl are prohibited by the Qur'an. In fact the Riba of the Qur'an and the Riba of the Sunna are exactly the same. The Sunna simply acts as a living commentary on the Qur'an.

Taking from the basic classification of Riba the new pro-banking scholars initiated a whole process of Islamisation of capitalist institutions starting with the most important one: the bank. To Islamise the bank, not only did interest had to be disguised, but also

the use of paper money. The disguising of interest was done through several mechanisms, the most important of which was the re-definition of Murabaha as a financial contract. The acceptance of promissory notes was done through a careful redefinition of Riba which basically replaced the meaning Riba an-nasiah with a new definition. How was it done?

## 4.4 The misunderstanding of Riba an-nasiah today

Modern pro-banking ‘ulema have inherited the same ‘perplexity about equivalence’ that has haunted economists since Bentham. They could not understand the meaning of ‘gold for gold, equal for equal, hand to hand’. They were misled to substitute the meaning of the sentence with a simpler understanding of interest. In the process they ignored two things: one, the comprehensive meaning of ‘equal for equal’ which goes beyond interest; two, they completely ignored the issue of deferment.

Their mistakes are basically the same as Reda’s. The first mistake is to identify Riba with interest. They say that Riba and interest are the same thing and can be used interchangeably. The second mistake is in the classification of Riba which produces an inadequate understanding of Riba an-nasiah.

Among these modernist ‘ulema, some have come up with an altogether new classification:

The Riba of loans and the Riba of sales. These two are called ‘Riba al-duyun’ and ‘Riba al-buyu’. Riba al-duyun refers to contracts in which there is delay, such as loans and delayed sales. Riba al-buyu refers to contracts in which there is no delay, such as normal sales and exchange. Under this classification they insist in calling applying Riba al-fadl to those transactions that occur in sales. And they identify Riba

an-nasiah with Riba al-jahiliyya and with the increase in loans. This is exactly the same as the classification of Reda, except they are now using new terms.

These modernists mistranslate the Ayat (2:275) saying that it means “God has forbidden interest”. And they complete their misunderstanding by endorsing literally the hadith that says “There is no Riba except in nasiah.” According to us this hadith does not exclude the other forms of usury.

According to them the prohibition of Riba an-nasiah essentially implies that the Shari’ah does not permit interest. For them, the point in question is “the predetermined positive return” (Chapra 1985, Towards a Just Monetary System. Leicester: The Islamic Foundation. p. 57). The prohibition of “predetermined positive return” – along with “interest-free” – is another key aspect of their thesis, yet it cannot substitute the true meaning of Riba.

What is important about this issue is that they equate Riba an-nasiah with the loan, and it is removed from any meaning in the exchange and other contracts. We will see later the implications of this.

They admit that there is a Riba al-fadl but they have also changed its meaning. They say that Riba al-fadl is encountered in hand-to-hand purchases and sales of commodities. It covers all spot transactions involving cash payment on the one hand and immediate delivery of the commodity on the other. This leaves them completely puzzled as to the meaning of deferment in the exchange. They ignore the fact that unjustified disparity (tafadul) when occurring in a loan is Riba al-fadl as well. This vacuum is filled with their own definition of Riba an-nasiah, which allows them to remove it from its true meaning. To give a semblance of validity to their mistaken position, they quote all the authorities and the hadith but they change the context and twist the meaning of what type of Riba is applicable, thus derailing the comprehension of the issue. In short, it is a complete swindle.

For example, they argue that from the prohibition of Riba al-fadl arises the saying of the Prophet, sallallahu alayhi wa sallam, requiring that if gold, silver, wheat, barley, dates and salt are exchanged against themselves they should be exchanged on the spot and be equal and alike. Although they admit that the mentioned six items performed the function of money at that time, they do not draw any parallel with the issue of money exchange. They say paper money is not part of the prohibition because it is not one of the items mentioned in the hadith. This is irrelevant because promissory notes either have a value as ‘ayn or dayn. If it is ‘ayn their value is zero. If it is dayn, then they represent a deferred payment which is not permissible in the exchange.

While explaining the significance of Riba al-fadl and why it has also been prohibited, Chapra provides the following arguments: On the surface it appears hard to understand why anyone would want to exchange a given quantity of gold or silver or any other commodity against its own counterpart, and that too ‘spot’. He says that what is essentially being required is justice and fair play in spot transactions; the price and the counter-value should be just in all transactions where cash payment (irrespective of what constitutes money) is made by one party and the commodity or service is delivered reciprocally by the other. He says that any thing that is received as “extra” by one of the two parties to the transaction is Riba al-fadl, which could be defined in the words of Ibn al-Arabi as all excess over what is justified by the counter-value. Therefore he argues that justice can be rendered only if the two scales of the balance carry the same value of goods. And finally he concludes that this point was explained in a befitting manner by the Prophet, sallallahu alayhi wa sallam, when he referred to six important commodities and emphasised that if one scale has one of these commodities, the other scale also must have the same commodity, “like for like and equal for equal”. He further continues to argue that to ensure justice, the Prophet, sallallahu alayhi wa sallam, even discouraged barter transactions and asked that a commodity for sale be exchanged against cash and the cash proceeds be used to buy

the needed commodity. This is because it is not possible in a barter transaction, except for an expert, to accurately determine the fair equivalent of one commodity in terms of all other goods. Hence, the equivalents may be established only approximately thus leading to some injustice to one party or the other. The use of money therefore helps reduce the possibility of an unfair exchange (Ibid, pp. 58-59).

This position eliminates the possibility of nasiah being part of the exchange. He simply says that such transactions of gold for gold do not occur any more and therefore the issue is irrelevant. The reality is that they occur every day – every time a promissory note is used. They only consider that what is forbidden is the interest in the loan and the excess in the exchange of the same genus. Everything else is ignored.

Following from the previous argument Chapra further concludes that all commodities exchanged in the market would be subject to the possibility of Riba al-fadl. He says that its prohibition is thus intended to ensure justice and eliminate all forms of exploitation through 'unfair' exchanges and to close all back doors to Riba since, in the Islamic Shari'ah, anything that serves as a means to the unlawful is also unlawful. He argues that the Prophet, sallallahu alayhi wa sallam, also equated with Riba the cheating of an unsophisticated entrant into the market and the rigging of prices in an auction with the help of agents. Thus, he says, the extra money earned through such exploitation and deception is nothing but Riba al-fadl. Riba al-fadl, deprived of any other meaning, becomes according to him any form of injustice, and he cements his case with the hadith of the Prophet, sallallahu alayhi wa sallam, who said: "Leave what creates doubt in your mind in favour of what does not create doubt." And also Khalif Umar who said: "Abstain not only from Riba but also from **Ribah**" the latter literally meaning 'doubt' which refers to income that has the semblance of Riba or which raises doubt in the mind about its rightfulness. It covers all income derived from injustice to, or exploitation of, others (Ibid, p.61).

Thus Riba al-fadl is completely redefined in terms of injustice and Riba an-nasiah is pushed aside as merely concerning loans, where in fact it does not fit except in the cases in which “debt for debt” is applicable, that is, except in the case of repaying a debt with a debt.

Referring to Fakhruddin al-Razi, Chapra concludes that Riba an-nasiah and Riba al-fadl are both essential components of the verse “God has allowed trade and prohibited Riba.” And he says that while Riba an-nasiah relates to loans and is prohibited in the second part of the verse, Riba al-fadl relates to trade and is implied in the first part. He says that injustice inflicted through Riba may be perpetuated through business transactions, and Riba al-fadl refers to all such injustices or exploitation. It requires absence of rigging, uncertainty, or speculation, and monopoly and monopsony (Ibid, p.61).

Now, if we examine this sentence “Riba an-nasiah relates to loans” we can understand the nature of their mistake. What Chapra and others say is that nasiah refers to the Riba that occurs in transactions that have delay (such as a loan), while the proper position is that Riba an-nasiah is the “unjustified deferment” that occurs in any type of transactions (it could occur in an exchange, for example). In fact, although there is deferment in a loan, it does not constitute an unjustified deferment. Deferment in a loan is Halal (except in the case “debt for debt”). The cause of “unjustified excess” in a loan is disparity. Therefore, deferment is not the cause of Riba in the case of a loan, rather disparity is a cause of Riba. It follows that the type of Riba which is associated with the charging of interest in the loan is Riba al-fadl and not Riba an-nasiah.

This mistake is not just a simple mistake, it carries important consequences. By redefining Riba an-nasiah, it loses its meaning. It loses its ability to define the Haram which is inherent in unjustified deferment. This will prevent Islamic Bankers from being able to question the unlawful use of promissory notes in the exchange and

other transactions in which the use of dayn is unlawful. It follows that this mistake is a back-door justification of paper money.

Islamic Bankers agree that interest charged by commercial banks "is identical with the excess stipulated as an obligatory condition in the contract, which is one of the two types of usury prohibited by Islamic Shari'ah." But they ignore any question about the possibility of Riba by deferment in the exchange and other transactions, so critical to understanding paper money. The Islamic Fiqh Academy established by the Organization of the Islamic Conference (OIC) in its second session held in Jeddah, Saudi Arabia, 22-28 December 1985, declared that "any increase or profit on a loan which has matured, in return for an extension of the maturity date, in case the borrower is unable to pay, and any increase or profit on the loan at the inception of the loan agreement, are both forms of usury (Riba), which is prohibited under the Shari'ah" (Ausaf Ahmed 1995, *The Evolution of Islamic Banking*. In Encyclopaedia of Islamic Banking, London: Institute of Islamic Banking and Insurance. p.17).

In conclusion, the modernist classification reduces Riba to two issues: interest in loans and any form of monopoly or monopsony, or rigging the prices in the market. The first they arbitrarily call Riba an-nasiah, and the second Riba al-fadl. This classification twists the meaning of the two types of Riba and it ignores the vital issue of the use of paper money in the exchange and by extension the whole matter of paper money. In essence, their idea of Riba is interest on a loan.

## 4.5 Equating Riba to interest in a loan

Pro-banking scholars equate interest with Riba. According to them, Riba refers to the premium that must be paid by the borrower to the lender along with the principal amount as a condition for the loan or for an extension in its maturity (Chapra 1985, p.64). In other words,

Riba is the predetermined return on the use of money. In the past there has been dispute about whether Riba refers to interest or usury, but there is now consensus among modernist scholars that the term covers all forms of interest and not only “excessive” interest [as previously believed by Reda and others] (Khan, W. M. (1985), *Towards an Interest-Free Islamic Economic System*. Leicester, Islamabad: The Islamic Foundation, The International Association of Islamic Economics. p.52).

Modernist scholars have concluded that the most important characteristic of Riba is that it is the positive and definite result of money when changed. In other words, when money begets money, without being exchanged for goods or services, it is called Riba. Its basic characteristics, according to them, are:

1. It must be related to loan;
2. A predetermined amount of money is to be paid when due;
3. A time is fixed for the repayment; and
4. All these elements for repayment are taken as conditions for loan.

In this reductionist view the whole issue of deferment is ignored.

## 4.6 Islamic Banking

### 4.6.1 Islamic Banks are banks

The ultimate result of this deviationist view of Riba is the justification of banking. Their premises are that ‘banking without interest’ is Halal. In fact, although Islamic Banking defines itself as non-interest banking, it actually charges interest, only with a different name. They call it

profit, sometimes dividends, sometimes mark-up through various deceptive schemes. But apart from those deceptive methods of hiding interest, the main problem remains that the Islamic Bank IS a bank. Islamic Banks, like all banks, practice 'fractional reserve banking'. Fractional reserve banking is the essence of fiat money. Through this method they use and create fiat money and consequently they endorse the current system of paper money.

Firstly, in Islam, the person (in our case, the banker) who receives a deposit (wadi'a) from another is not entitled to trade with it. This is considered a transgression of the contract. In the past Muslims dealt with payments directly on their own or through a complex network of wakils, who did not create credit, they only executed the orders of their customers, i.e. to make a payment or receive a payment. Money and credit were not mixed. And the wakils did not use the money in deposit for their own trading.

Secondly, in Islam you cannot use debts as money. In the case of paper money which is not backed by specie (it is no longer a debt, although it used to be), the banker is trading with receipts whose value is due to the legal compulsion of the State. The present paper money is in fact a tax. There is no way of allowing this in Islam. Not only do the Islamic Bankers trade with paper money, they contribute to the creation of more paper money through the creation of deposits. It must be noticed that a bank deposit functions just like money.

To illustrate this point of the creation of money, we will give an example. In Canada the figures published by the Bank of Canada explain that by 1998 the ratio of all Canadian bank cash reserves ($3.893 billion) to their total assets ($1393 billion) had jumped to a level of 1:358, a number which is unheard of considering that historically, during the first 50 years of the 20th century, the ratio never exceeded 1:15. That means for every dollar of cash in their vaults or deposited with the Bank of Canada, the banks have conjured up $357 from the gap that they have invested or lent out with interest.

This example shows that the banks are actually the main contributors in the money supply of the nation.

What fractional reserve banking allows is for the bank to lend more in the form of deposits than what it holds in the form of cash. So what happens if everyone begins to feel nervous about the current system of fractional reserve banking, and growing numbers of people withdraw savings held in a bank? There is not enough cash. A bank run occurs, as witnessed by the tragic events of the Great Depression in the 1930s. For more recent events consider 1985, when numerous regional banks in the north-eastern United States faced bankruptcy due to a run on credit when individuals demanded a call on deposits. We also witnessed a bank run just recently in Argentina, in 2001. The police were called, and customers were refused entry into commercial banks to withdraw savings. Elected officials and governments in various countries have gone so far as to force the closure of banks, to prevent a bank run from happening and causing a chain of events which could become uncontrollable and essentially destroy the current banking system.

The solution put in place once a bank has been closed is to use everyone's tax money through central banking insurance to eliminate the problem until it occurs again.

States, by 'protecting' banks from bank runs by means of deposit insurance, ultimately compound the problem by fractionating further the central bank reserves on which the banks draw from to begin with. The current banking industry is regulated in such a manner that a legitimate cartel of money-makers has been created. The State protects this banking cartel from the normal rationale and logic of the contractual law.

Islamic Banks are no exception to this system. They are part of it. They practice fractional reserve banking which is the basis on which the majority of the money in circulation comes into being. They do not

have sufficient cash to back all the money generated. The excess is incorporated into the economy as money supply which contributes to the phenomenon of inflation.

The first idea of Islamic Banking derives from the ideas of ‘Abduh, who equated the bank with Shirkat and Qirad. The principle that kick-started Islamic Banking was the idea that investment banking – since they do not give loans, they only invest – could be made Halal. They argued that they do not charge interest because they invest their money with other businesses. The only reform required, according to them, in Islamising investment banking was not to pay interest to the account holders. That did not signify a problem but rather another way of making even more profit. So, according to them, investment banking without paying interest to the account holders was Halal.

What the Islamic Bankers cannot avoid are the diseases of banking practice, especially inflation. Since they cannot defend inflation from an Islamic perspective, what they say is that the problem belongs to the government, not the banks. This is not true. The governments regulate inflation, but the main producers of money supply are the banks, including Islamic Banks. When they are finally pressed on the matter they argue in typical fashion by resorting to the concept of darurah.

Naturally, the idea of the Gold Dinar and Silver Dirham (the Shari’ah currency) is abhorrent to bankers, and this shamefully includes Islamic Bankers – because banking cannot operate with a monetary regime of pure gold and silver. They need paper money, whether being part of a gold standard, or even better, with the new fiat money which the State advocates. Islamic Banking is part of banking. It is Haram and its practice is the most deceitful machination against Islam that we have ever had in our history. Islamic Bankers have made the Haram Halal. Their crime is therefore double. Firstly by using the Haram, and secondly by altering the Islamic Law to justify their practices.

### 4.6.2 Murabaha: what it is and what it is not

This known sales contract in Islamic Law has been perverted at the hands of the so-called Islamic Banks. Murabaha occupies between 80 to 90 percent of all Islamic Banking transactions. We could say that without their version of Murabaha, Islamic Banks would not be able to exist today. Under the label of Murabaha, which is a sale, Islamic Banks portray a means of finance based on a well known forbidden practice known as "two sales in one". This practice of "two sales in one" is a disguising mechanism which presents usury as if it was profit.

What do Islamic Banks say about Murabaha?

*"Murabaha: Literally means mark-up. This tool is mainly used to finance trade. Under this mechanism the bank purchases in its own name goods that a buyer wants. It then sells the goods to the buyer for a profit. The buyer settles the payment with the bank in instalments."*

This description is what we call "two sales in one" and it is forbidden. Imam Malik wrote in his Muwatta:
*"Yahya related to me from Malik that he had heard that the Messenger of Allah, may Allah bless him and grant him peace, forbade two sales in one sale."*

*"Yahya related to me from Malik that he had heard that a man said to another, 'Buy this camel for me immediately so that I can buy him from you on credit.' 'Abdullah ibn 'Umar was asked about that and he disapproved of it and forbade it."*

Before we examine this matter in detail we will look at the true meaning of Murabaha. In our Fiqh the contract of Murabaha is a sale contract, which means that there is an offer and an acceptance of the

price of a particular item of goods in a single transaction. The typical disputes rising from the Murabaha contract are related to the definition of the basic price on top of which he adds his mark-up. In a Murabaha, the basic price is linked to the final price. The mark-up used as an example in the Muwatta of Imam Malik is 10%. Malik makes the following example of a man selling goods in Murabaha:

*"If a man sells goods worth one hundred dinars for one hundred and ten"*

In a normal sale, the seller is not obliged to state the price he paid for the goods originally, but in the Murabaha you state the original price plus the mark-up.

*"If someone sells goods in Murabaha and he says, 'It was valued at one hundred dinars to me.'*

The normal practice consisted of a seller buying the goods in a city and then going to another city to sell in Murabaha saying: "It was valued at so and so and I am selling it for so and so" or simply stating "I am selling with a 10% mark-up"

In the traditional Murabaha, the goods are in the possession of the seller before he makes the offer. In the so-called Murabaha of Islamic Banking, the buyer comes to them and says, I want to buy such and such. Then the Islamic Bank goes and buys it in cash and sells it to the client for the price plus a mark-up in delayed terms. This practice is "two sales in one" and it is forbidden.

The critical matter of Murabaha that occupies the attention of our 'ulema is the definition of basic price, so that there is no abuse. There are some expenses that are included in the basic price and there are some others that are not included. When a cost is included then the seller becomes entitled to make a mark-up on those costs.

Ibn Rushd explains this matter in the following way:

*The majority of the jurists agreed that sale is of two kinds: Musawana and Murabaha. Murabaha takes place when the seller declares the price for the buyer from which he had bought the goods, and then stipulates some profit in dinars or dirhams.*

Ibn Rushd analyses all the discrepancies on this matter in his *Kitab al-Murabaha* in the *Bidayat al-Mujtahid*. He raises all the issues concerning what is allowed and what is not. In general it is permissible for the seller by the way of Murabaha to buy in delayed terms and also to sell in delayed terms. There is only one element to consider as explained by Ibn Rushd:

*Malik said about the person who bought goods for credit for a period and sold them by way of Murabaha, that it is not permitted to him unless he discloses the period. Al-Shafi'i said that if this takes place, the buyer would have a period (of credit) similar to his.*

What this means is that the contract of Murabaha is regulated. That what is considered the initial price (basic price) upon which the mark-up (the profit) is fixed, is well defined. The basic price includes the price paid and all the costs involved in the transport, etc, very similar to the case of the agent of Qirad. The seller has to state these extra costs to the buyer, and there is no harm in reducing them if it is commonly agreed.

Murabaha is not a finance contract such as the Qirad is. Murabaha is a sale and it is therefore regulated under the general laws that apply to sales. What is forbidden in a sale is forbidden in a Murabaha sale, and what is allowed in a sale is allowed in a Murabaha. The only difference from a normal sale is the way of stating the pricing.

## 4.6.3 How the Islamic Bank's version of the contract of Murabaha came into being

Perhaps the most famous thinker of Islamic Banking is the Pakistani scholar Taqi Osmani, who in an essay on Murabaha states:

*"Murabahah" is, in fact, a term of Islamic Fiqh and it refers to a particular kind of sale having nothing to do with financing in its original sense. ...*
*Murabahah, in its original Islamic connotation, is simply a sale. The only feature distinguishing it from other kinds of sale is that the seller in Murabahah expressly tells the purchaser how much cost he has incurred and how much profit he is going to charge in addition to the cost.*

This is correct except that the sentence "how much profit he is going to charge in addition to the cost" should read "how much profit he is charging in addition to the cost". The difference between future or present is essential to understand how the sale actually takes place. The first suggestion implies that there is an original pre-agreement before the seller has purchased the items for sale, but this is not the case.

The position of Taqi Osmani, like many other Islamic Banking scholars, is that Murabaha stands as a principle, namely, the ability to state the mark-up of a sale, and what they do then is to combine this principle with a sale in delayed terms. What Islamic Bankers call Murabaha is not Murabaha, but simply another form of Riba.

Taqi Osmani, like all Islamic Bankers, ignores the prohibition of "two sales in one". We will now examine this principle again.

### The Prohibition of Two Sales in One

Ibn Rushd explains this issue in his *Bidayat al-Mujtahid*:

"A theme relevant to the subject in this chapter is the tradition affirming that The Messenger of Allah, may Allah bless him and grant him peace, proscribed two sales in one, according to the hadith of Ibn 'Umar and those of Ibn Masud and Abu Hurayra. Abu Umar said that all these have been transmitted by trustworthy authorities. The jurists, therefore, agreed generally on the implication of this hadith, but differed over the details – I mean the form to which the term is applied and that which it is not. They also agreed on some of its forms. This sale may take place in three ways:
-one is exchange of two priced commodities for two prices,
-another is exchange of a priced commodity for two prices, and a
-third is exchange of two priced commodities for one price, in which case one of the two sales is binding.

The (sale of) two priced commodities for two prices is visualised in two ways: first that one says to the other, "I will sell you this commodity for such a price on the condition that you sell me that house for such a price;" and second that he says to him, "I will sell you this thing for a dinar or this other commodity for two dinars." The sale of a single commodity for two prices is also visualised in two ways: first, that one of the prices is in cash while the other is on credit, and the second is like one saying to the other, "I will sell you this dress in cash at such a price on the condition that I buy it from you (on credit) for such a period at such a price". The (sale of) two commodities for a single price is like saying to the other, "I will sell you one of these two for such and such price."

... If, however, he says, "I will buy you this dress for cash for so much on the condition that you buy from me (on credit) with a period," it is not permitted unanimously (by 'ijma), according to them (the jurists), as it is one category of 'ina, which is the sale by a person of what he does not have and it also involves the prohibiting case of jahl about the price.

Malik wrote in the Muwatta:

"Yahya related to me from Malik that he had heard that al-Qasim ibn Muhammad was asked about a man who bought goods for ten dinars cash or fifteen dinars on credit. He disapproved of that and forbade it."

Malik said that if a man bought goods from a man for either ten dinars of fifteen dinars on credit, that one of the two prices was obliged on the buyer. Such a thing was not to be done because if he postponed paying the ten, it would be fifteen in credit, and if he paid the ten, he would buy with it what was worth fifteen dinars on credit.

Malik said that it was disapproved of for a man to buy goods from someone for either a dinar cash or for a described sheep on credit and that one of the two prices was obliged on him. It was not done because the Messenger of Allah, may Allah bless him and grant him peace, forbade two sales in one sale. This was a kind of two sales in one.

All this proves that the practice of what the Islamic Banks call Murabaha is forbidden. It is in fact not Murabaha, but two sales in one, which is forbidden by the Messenger of Allah, may Allah bless him and grant him peace.

The prohibition of two sales in one also includes a hideous practice which has become common in our markets and which has been endorsed by Islamic Bankers. It refers to those people who sell their goods with two prices, one in cash and one on credit. This is Haram and has to be eradicated. Either the seller sells for one price or the other. If he decides to accept delayed payment, the price cannot increase.

Taqi Osmani affirms that the transformation of Murabaha into finance, and the consequent Islamisation of finance, are not correct in the Shari'ah but only a temporal measure:

*"Originally, Murabahah is a particular type of sale and not a mode of financing. The ideal mode of financing according to Shari'ah is mudarabah or musharakah which have been discussed in the first chapter. However, in the perspective of the current economic set up, there are certain practical difficulties in using mudarabah and musharakah instruments in some areas of financing. Therefore, the contemporary Shari'ah experts have allowed, subject to certain conditions, the use of the Murabahah on deferred payment basis as a mode of financing. But there are two essential points which must be fully understood in this respect:*

***1**. It should never be overlooked that, originally, Murabahah is not a mode of financing. It is only a device to escape from "interest" and not an ideal instrument for carrying out the real economic objectives of Islam. Therefore, this instrument should be used as a transitory step taken in the process of the Islamization of the economy, and its use should be restricted only to those cases where mudarabah or musharakah are not practicable.*

However, the idea of a 'transitory step' has not been conveyed to their customers. Customers are told that the practice of Murabaha is Halal. The worst problem is that this practice is in reality a transitory step not to an Islamic model, but to a further integration with the capitalist system, which is what they call the Islamisation of the economy. Islamisation of the economy is therefore not the transformation of our surrounding capitalist reality, but the transformation of the Islamic Law to suit capitalism.

**Murabaha as practiced by Islamic Banks is a pure deception**

Tariq al-Diwani wrote in his essay "Islamic Banking isn't Islamic" (the full article together with some other relevant material is available online in *http://www.islamic-finance.com/indexnew.htm*)

*"The contractum trinius was a legal trick used by European merchants in the Middle Ages to allow borrowing at usury, something that the Church fiercely opposed. It was a combination of three separate contracts, each of which was deemed permissible by the Church, but which together yielded a fixed rate of return from the outset. For example, Person A might invest £100 in Person B for one year. A would then sell back to B the right to any profit over and above say £30, for a fee of £15 to be paid by B. Finally, A would insure himself against any loss of wealth by means of a third contract agreed with B at a cost to A of £5. The result of these three simultaneously agreed contracts was an interest payment of £10 on a loan of £100 made by A to B.*

*I had read about the contractum trinius some months before first encountering the full documentation behind an Islamic Banking Murabahah contract. It was the kind of contract that Person A might use in order to finance the purchase of good X from Person B. The bank would intermediate in the transaction by asking A to promise to buy good X from the bank in the event that the bank bought good X from B. With the promise made, the bank knows that if it buys good X from B it can then sell it on to A immediately. The bank would agree that A could pay for good X three months after the bank had delivered it. In return, A would agree to pay the bank a few percent more for good X than the bank had paid to B. The net effect is a fixed rate of financial return for the bank, contractually enforceable from the moment that the bank buys good X from B. Money now for more money later, with good X in between.*

*The above set of legal devices is nothing other than a trick to circumvent Riba, a modern day Islamic contractum trinius. The fact*

*that the text of these contracts is so difficult to come by is one shameful fact of Islamic Banking. If so clean, why so secretive? The following is an excerpt from a Murabahah contract that was used frequently by two major institutions during the 1990's. The 'Beneficiary' is the client that needs finance, and earlier clauses require that the Beneficiary acts as the agent of the Bank in taking delivery of the goods."*

This deception is not acceptable in Islamic Law. It is simply a trick to present something Haram as something Halal.

### 4.6.4 The danger of making principles out of contracts

Once contracts are transformed into symbolic principles, any consequent interpretation will be completely deprived of Islamic ‘amal. The result is that Islamic economics can intellectually free-float to reach unprecedented realms of ‘Islamisation’ in accordance with the general plan of the ‘Islamisation of capitalism’.

Using the work of people like Taqi Osmani, a legion of new Islamic Bankers take his ‘ijtihad’ and build the basis upon which, through the same methodology of principles, they move to the next layer of ‘Islamisation’. When it comes to the Islamisation of bonds and derivatives, the original sources are completely forgotten. What is used as the basis of reasoning is the “judgement” of the previous generation of Islamic Bankers. The result is absurdity upon absurdity. The ‘Islamisation’ of the futures market is the latest, yet not the final move, of this unrestrained development of deception called the ‘Islamisation of the economy’. On this issue see *A Juridical Rebuttal of Taqi Osmani* written by Hadhrat Maulana Mufti Habeebullaah of Pakistan. Mufti Habeebullaah wrote:"

*"I have made an in-depth study of Mufti Muhammad Taqi Uthmaani Sahib's book, Islaam Aur Jadeed Ma' eeshat Wa Tijaarat (Islam and Modern Life and Trade). I have concluded that Mufti Saheb has embarked on an unsuccessful attempt to establish the capitalist system with the aid of Islam and the Shari'at. While Islam has refuted this system, Mufti Saheb has, on the contrary, endeavoured to make Islam subservient to this (capitalist) system. But, we (Muslims) and our social, political life and systems are all subservient to the Shari'ah. Mufti Saheb has furthermore attempted, by the addition of the word jadeed (modern), to present the system of the capitalists in the hues of the Shari'ah. This endeavour envisages monetary gain for the capitalists who will be led to believe that their gain is halaal profit. They will thus make use of such profit without understanding a sin to be sinful. This is truly loss in this world and in the Aakhirah."*

The technique used is the transformation of Islamic Law into abstract principles devoid of their natural context and then the free application of these principles by analogy into alien contracts. Thus this process is considered to "Islamise a contract". Below is an example of how Mudaraba is symbolically interpreted as profit-sharing and Musharakah as equity participation. The implication is that if Mudaraba is an Islamic contract validated by the Islamic Fiqh, so is any form of profit-sharing as a principle already existing in the capitalist world.

*"This is a good argument if the impact of Mudarabah to mobilise resources can be extended economy-wide or if Mudarabah-Musharakah (profit-sharing & equity participation) financing could be qualified as cooperative and active participation among shareholders rather than being simply a management of idle funds pooled by partners."*

*(Prof. Dr. Masudul Alam Choudhury, Islamic Political Economy, a critique of Islamic Economics. Published in Journal of Alternative Political Economy. Vol I, No I, January 99; Penang, 1999, p. 9.)*

This apparently harmless importation of economic terms has a double implication. These imported terms simplify and replace the complex nature of the contract within the Islamic ‘amal, in favour of principles (which are de facto called Islamic principles) which tacitly carry all the connotations and background of a different philosophy. Then, these principles are used to label and justify other situations which may have nothing in common with the original contract.

Mudarabah or Qirad is more than ‘profit-sharing’. It has many obligations and restrictions in the context of the Islamic ‘amal which are not covered by the term ‘profit-sharing’. Sharika or Shirkat is different from ‘equity participation’. What is understood by equity participation in capitalism and in Islamic law is completely different.

## 4.7 The Stages of the “Islamisation” process

The first part of the modernist/reformist ijtihad was conducted by Muhammad ‘Abduh who legalised interest on the basis of its similarity to other forms of profit-taking in Islam, namely Qirad. The modernist analogy goes like this: the spirit of Qirad is to share profit from a legitimate business, therefore, from a legitimate business we can offer some form of ‘restricted profit’ or interest.

The second part of the Islamisation of Riba was the ijtihad of Hasan al-Banna regarding the legalisation of dividends as legitimate profit. His analogy consisted of saying that the spirit of dividends is just like a kind of ‘practical profit’, although dividends are decided by majority shareholders and they are independent of the results of the company.

The third part came with the development of Islamic Banking, among whose authors we could mention Yusuf Qardawi (Ikhwan al-Muslimun leader and Head of the Islamic Council of the Islamic Bank of Abu Dhabi) and Khurshid Ahmad (Jamaat al-Islamiya leader and one of the fathers of Islamic economics). They introduced the use of Arabic

names in order to conceal usurious practices. This process was the most insidious imaginable. It implied an absolute rejection of Islamic Law and its transformation by precarious analogy into 'Islamic principles' suitable for reform, such as was done with Murabaha.

## 4.8 On the methodology of modernism

In fact, Islamic finance is a major laboratory for innovation by modernists, who are determined by definition to remake or modernise contemporary reality by Islamising it. It is a peculiarly fertile field for innovation precisely because it is somewhat removed from politics and hence from the political extremism associated rightly or wrongly with Islamic 'fundamentalism'. Inspired by Ahmad al-Najjar's brief experience in Nasser's Egypt, the Organization of the Islamic Conference (OIC) launched the Islamic Development Bank in 1973. Then, beginning in 1975 with the Dubai Islamic Bank, scores of private sector commercial Islamic Banks opened for business and competed successfully with conventional banks, first in many Arab and then in other Muslim and even non-Muslim countries. Despite their rapid growth, however, they appear today to be stagnating. Symptomatically the Dubai Islamic Bank required a rescue package in 1998, and a number of other Islamic commercial banks show signs of stumbling. One of their basic problems is that they do not have an adequate arsenal of financial instruments with which to compete with conventional banks. Consequently they have encouraged financial engineers and innovative legal scholars to contribute to the present situation in the hope that they can obtain a 'second wind'.

There have been basically two approaches to Islamic finance. One is to take the macro approach of Islamic economics and "mine the classical law corpus for fundamental Islamic principles" so as to draw conclusions in terms of interest-free economies. The other approach is the micro approach more or less in focus with Islamic law or Fiqh upon

the “concrete individual actions that have prime religious significance” which then are transformed into Islamic principles ready for implementation. The micro, formal, transaction-based perspective, is the one that most influences the practices of Islamic Banking and finance today. This is done by reducing the Fiqh to a few simple rules that are usually incorrect as statements about the classical law. Consequently, mixing the two approaches leads to confusion.

Economists retort that the findings of the ‘conservative’ legal scholars ought to be rationalised, since vulnerable to charges of perpetuating an opposition to Muslim progress.

Their preferred method for elaborating their fatwa and applying it to contemporary circumstances are four: 1) by ijtihad or new interpretation in light of the ‘principles’ of the Qur’an and the hadith; 2) by choice (ikhtiyar) among the views already propounded by past scholars and adapted by a variety of possible criteria, including the general welfare, or maslaha, to the present circumstance; 3) by necessity (darurah); and 4) by legal artifice (which they often call hila, pl. hiyal) or clever uses of law to gain legitimate ends.

While traditional legal scholars prefer to avoid ijtihad wherever they can justify innovations by appeals to precedent, ijtihad is the preferred method of the modernists, notably in contemporary deliberations about options, which are financial instruments critical to any effective future for Islamic finance. Professor Kamali, a celebrated Islamic Economist, while calling for ijtihad, explicitly adopts the method of choice and the criterion of the general welfare in his legal analysis of these instruments.

The best example of the use of legal artifices is Murabaha. Murabaha – as we analysed earlier – has been transformed into a means of financing a sale by making two transactions into one. The latest modernist scholars now argue that time value of money is a valid argument (which it is not) but they reject making money from money.

Under this legal artifice, the bank financing a Murabaha sale must actually buy the merchandise and then advance it to the buyer. In practice, however, Islamic Banks in Pakistan, Malaysia and elsewhere have devised another type of even more artificial Murabaha, whereby the creditor immediately releases the merchandise to the buyer without ever really possessing it or even fully identifying it. The Fiqh Academy of the Organization of Islamic States has condemned this practice, yet many Islamic Banks engage in such artifices and perhaps lack the commercial expertise and warehousing capabilities literally to fulfil the conditions of a 'real' banking Murabaha. The major portion of outstanding credit extended by Islamic Banks takes the form of Murabaha but the proportion of it that is artificial is unknown. Any systematic attack on the artifice, however, could place the entire Islamic financial movement in jeopardy. Out of necessity Islamic Banks are in constant need of new financial instruments.

Darurah has been used as an instrument to Islamise capitalism. This abuse of the use of darurah must be counteracted by the restoration of the Halal, starting from the Zakat. The issue of Zakat is fundamental to our Deen and fundamental to the restoration of an Islamic economic life. Zakat cannot be paid in dayn. The argument against the prescription of the Law is that under the present circumstances, Muslims will be deprived of paying their Zakat if not in paper money. Even if you accept this version of reality, Muslims cannot dwell in darurah. The principle of darurah is a temporary excuse while every possible effort is made to change the circumstances. Instead of that, however, pro-banking 'ulema use this Islamic principle of darurah to justify the use of paper money. The reality is that Muslims cannot be prevented from minting and using the Islamic Gold Dinar and Silver Dirham. Using darurah in this way is an excuse which serves to preserve the status quo. It is being used as a tool to make the Haram Halal.

The ijtihad of the modernists is not ijtihad. Their ijtihad comes associated with a rejection of taqlid, which is what they call 'blind

following' of the traditional Fiqh. It is simply another form of legal artifice to make the Haram Halal. The key of their deviation is the rejection of the traditional Fiqh, which is seen as medieval scholarship. Instead they go directly to the Qur'an and the hadith. The texts deprived of context or legal ruling are then transformed into Islamic principles, such as the principle of no-interest, or the principle of legal validity of time value, and then these principles are applied to anything from bonds to derivatives, including options, swaps, shares, and also credit cards, loans and debt trading.

The use of maslaha, or public benefit, is another of the tools of Islamisation. Given adequate elaboration, public benefit could be interpreted as anything. It has been argued that the use of paper money is justified for public benefit. Why would you carry heavy gold coins in your pocket if you can use lightweight paper money or an even lighter credit card? Such an argument is used to justify the most ludicrous aspects of the present capitalist society.

The issue of Islamic T-Bills is of critical importance not only for monetary policy but also for the Islamic Banks, always in need of safe havens for parking their excess liquidity. In this and other similar issues there simply is no consensus as to what is or is not permitted in the Islamic imagination of the Shari'ah Banking Boards. There is a full spectrum of legal arguments and country practices. Virtually all existing government securities are acceptable to some Islamic Banks and not to others, depending upon the legal interpretations of their respective Shari'ah boards. Thus the Malaysian Model, the State models of Pakistan and Iran, and the Arab Islamic Model use different criteria on these new issues. While the Malaysian Model has accommodated Islamic Banks in a dual system of Islamic and conventional banks, it is by no means evident that Malaysian practices would prove Islamically acceptable in Arab countries. There is no generally accepted Islamic formula for a relatively risk-free government security.

Another standard building block of modern conventional finance is the ‘option’, a right without obligation to buy or sell something at a future date at a specified price. Malaysian Professor Mohammad Hashim Kamali has presented a ‘provocative’ legal defence for various sorts of Islamic derivatives based on futures markets for commodities. Much of his argument depends on the institutional capacity of the market to control the elements of gharar, or speculation, inherent in a derivatives market. Professor Kamali displays a remarkably sophisticated appreciation of modern finance that is not yet shared by most ‘traditional’ legal scholars. As the bankers and economists broaden the legal community’s understanding of finance, however, interpretations along his lines crystallise day by day into a new ‘consensus’ concerning Islamic derivatives. Islamic finance has acquired a considerable ‘flexibility’ from the initial steps taken by the first Islamic Bankers. It has by no means finished, and will not be until it becomes completely integrated into the kafir banking system.

While it is understandable that many Muslims find themselves in a situation where they perceive that banking is necessary to their lives, it is not justified to call it Islamic. If Muslims are forced by circumstances to create a bank they should call it the “Haram Bank”. The name will make people aware that all the transactions taking place in the bank are forbidden and it will encourage people to eliminate our dependency on the banking system.

The way of doing this is by establishing what is Halal. This starts with the re-introduction of our Shari’ah currency, the Gold Dinar and Silver Dirham, and the creation of payment systems which are not banking, that is, they do not mix money with credit. After the Islamic payment system is in place the next stage should be the creation of Islamic markets, the re-introduction of the caravans, the guilds and the Islamic courts of justice that can guarantee the true application of the genuine Islamic contracts: Shirkat and Qirad.

# 5. Understanding Paper Money

The first aspect of arriving at a judgment is to understand the subject matter, in this case what paper money is. After that we can look at the Qur'an and the Fiqh.

Paper money has evolved in nature through history. What we know today as paper money is not what it used to be. This evolution has passed through basically three stages:

1] A promissory note backed by gold or silver.
2] A process of unilateral devaluation leading to a complete revocation of the contractual agreement.
3] A piece of paper not backed by any specie, whose legal value is determined by the compulsion of the State Law.

Let us examine these three stages one by one.

## 5.1 Paper money backed by gold and silver

First paper money was issued by banks and it represented a certain amount of gold or silver, known as the specie. Even though it never was 100% backed by the specie, the issuing bank was obliged to pay the amount on demand. In this sense it represented a kind of debt.

When paper money was a debt, was it acceptable? What issues concerning Islamic Law are relevant?

At this stage a certain amount of gold was held by typically a banking institution and it issued a paper certificate giving the owner the right

to withdraw the specie on demand. (We will ignore the fact that this was a banking institution and it would have been dealing with Riba. We will pretend that they did not deal with interest in order to concentrate on the issue of paper money itself.)

**A)** The first issue that arises is the one of amana (trust): Your gold is in trust with a treasurer. What does Islamic Law have to say on this issue? Allah ta'ala says in the Qur'an in Surat al 'Imran (3:74):

Among the People of the Book there are some who,
if you trust them with a pile of gold,
will return it to you.
But there are others among them who,
if you trust them with a single dinar,
will not return it to you,
unless you stay standing over them.
That is because they say,
"We are under no obligation
where the gentiles are concerned."
They tell a lie against Allah and they know it.

The hukm (legal judgment or command) of this ayat, according to Qadi Abu Bakr ibn al-Arabi in his 'Ahkamul Qur'an', is as follows: "It is forbidden for Muslims to have amana with the kuffar outside Dar al-Islam," that is, "without standing over them" under the power of a Muslim authority. And the explanation for this is found in the ayat itself: "That is because they say 'we are under no obligation,' that is to say, because they can/will repudiate the agreement. Since this has been proven to be historically the case, we may conclude that this is of vital importance.

What this means is that it is not acceptable for Muslims to have money deposited with kuffar anywhere since we do not have a Dar al-Islam in which to exercise 'standing over them'. A lighter interpretation would suggest that it would be acceptable to have amana with a kafir if the

deposits are under the power of a Muslim authority. We accept the latter version. But what it categorically denies is the possibility of having amana with the kuffar when the wealth is stored under kafir authority.

We can conclude that when paper currencies – dollars, pounds, francs, etc. – were a debt, because the specie they represented was stored in trust away from our control, they could not be accepted by us, since we would fear that they would repudiate the agreement – as in fact later happened.

B) Now, assuming that the amana is under a Muslim authority, the second issue that arises is whether the promissory note can in itself be treated as money. In other words, whether the note can be used as a medium of exchange according to Islamic Law.

In this case the law of 'transfer of debts' becomes relevant. According to the School of the Amal of Madinah we find the following judgment and explanation in the Muwatta of Imam Malik:

Malik said, "One should not buy a debt owned by a man whether present or absent, without the confirmation of the one who owes the debt, nor should one buy a debt owed by a dead person even if one knows what the deceased man has left. That is because to buy it is an uncertain transaction and one does not know whether the transaction will be completed or not."

He also said, "The explanation of what is disapproved of in buying a debt owed by someone absent or dead is that it is not known which unknown debtors may have claims on the dead person. If the dead person is liable for another debt, the price which the buyer gives on strength of the debt may become worthless."

Malik said, "There is another fault in that as well. He is buying something which is not guaranteed for him, and so if the deal is not

completed, what he has paid becomes worthless. This is an uncertain transaction and it is not good."

The general idea is that in order to transfer a debt the original issuer of the debt (the person who has the obligation) must guarantee the value of the debt to the transferee (the person receiving the note). Thus, the first contract is liquidated and a new private contract is created. Debt is always kept as a private contract between the parties. It does not circulate without the creation of a new private guarantee (a new contract). The reason is that the person who has issued the debt may have more obligations than he can fulfil.

How would this injunction have applied when paper money was issued by the banks as a debt? Since every bank – and this is the whole idea of credit money – issued more obligations than the amount that they held in specie, it would not be acceptable to use any of its notes for trading. The reason is, that the person would be accepting a debt that is not guaranteed for him, especially when it is known that it cannot be guaranteed for him since the issuer (the bank) has more obligations than what it can fulfil. If every depositor in the bank were to demand the value of their notes, as is the case in a 'run on the bank', the bank would be unable to fulfil its obligations.

**Conclusion.** When money was a debt, in Islamic Law you would not have been allowed to use it. You would not be allowed to use a dollar, or a pound, or any note, whether it came from a kafir bank or a Muslim-owned bank, whether the specie was stored in a kafir country or in a Muslim country. Banking notes are not permitted to circulate.

But if the note is issued not by a bank, but instead by a person, and that person is present and can privately guarantee the physical possession of the goods, can in this case the note be transferred, sold or circulate in general? What aspects of the Law are relevant to the analysis of this case?

Again we have to go to the transfer of debts. What is relevant here is: what is the specie that is held as guarantee for the obligation? In other words, what is the specie of the note? If the obligation is in gold (money) then another set of restrictions come into place. If it is food then, again, another set of restrictions come into place. This is because gold, silver and food have a particular significance to trading – they are commonly used as a medium of exchange. The case is the following:

In the chapter called Money-Changing of the Muwatta of Imam Malik we read:

“Yahya related to me from Malik from Ibn Shihab from Malik ibn Aws ibn al-Hadathan an-Nasri that he once asked to exchange 100 dinars. He said, ‘Talha ibn ‘Ubaydullah called me over and we made a mutual agreement that he would make the exchange with me. He took the gold and turned it about in his hand and then said, “I cannot do it until my treasurer brings the money to me from al-Ghaba.” ‘Umar ibn al-Khattab was listening and ‘Umar said, “By Allah! Do not leave him until you have taken it from him!” Then he said, “The Messenger of Allah, may Allah bless him and grant him peace, said, ‘Gold for silver is usury except hand to hand. Wheat for wheat is usury except hand to hand. Dates for dates is usury except hand to hand. Barley for barley is usury except hand to hand.’””

The first restriction is that you cannot use the gold or food in an exchange (sarf) unless the specie is physically present there. You cannot use the claim of gold or food stored with a treasurer. The items exchanged have to be present.

This matter rules out any possibility of using paper notes representing gold or silver to buy physical gold or silver. In addition, the exchange of paper notes with other paper notes is prohibited because it is Debt-for-Debt.

This prohibition of using promissory notes in an exchange is further reinforced by the following words:

Yahya related to me from Malik that he had heard that al-Qasim ibn Muhammad said, "'Umar ibn al-Khattab said, 'A dinar for a dinar, and a dirham for a dirham, and a sa' for a sa'. Something to be collected later is not to be sold for something at hand.'"

Yahya related to me from Malik that Abu'z-Zinad heard Sa'id al Musayyab say, "There is usury only in gold or silver or what is weighed and measured of what is eaten and drunk."

All this clearly indicates that not only gold and silver but also any food that could be used as payment is included in the prohibition, that is to say, the prohibition extends to any form of 'common money'. Any note that represents any form of 'common money' cannot be used in an exchange. With that restriction in mind, it means that a banking note cannot really be used as money, but only as a private contract – which is the basis of our argument.

But what about a note held by a Muslim treasurer and guaranteed: can it be used in a transaction other than an exchange? Can it be used, for example, to buy other goods in the market?

"Yahya related to me from Malik that he had heard that receipts (sukukun) were given to people in the time of Marwan ibn al-Hakam for the produce of the market of al-Jar. People bought and sold the receipts among themselves before they took delivery of the goods. Zayd ibn Thabit and one of the Companions of the Messenger of Allah, may Allah bless him and grant him peace, went to Marwan ibn Hakam and said, "Marwan! Do you make usury halal?" He said, "I seek refuge with Allah! What is that?" He said, "These receipts which people buy and sell before they take delivery of the goods." Marwan therefore sent guards to follow them and take them from people's hands and return them to their owners."

This means that you cannot use a promissory note and use it for trading as if it were money. The correct purpose of the promissory note is not to be money, but to be a private contract that must remain private and not public.

So, what is the use of the promissory note? What is the halal usage of it? It is halal to have a contract or a debt, and it is also halal to transfer that debt, provided that the person who issued it is accessible and can guarantee the payment of the debt by signing a new contract (promissory note) with the new recipient. If the guarantor is not a Muslim, then in addition to what we have said, he also has to have his amana within Muslim territory and under the overall supervision of an enforcing Muslim authority.

## 5.2 Devaluation in paper money

The second stage refers to the process of those years in which paper money was constantly devalued from its initial obligation (they paid less than they had promised), up until the debt was finally completely revoked (they withdrew their obligation). This final elimination of the obligation took place with the dollar in 1973, when Nixon unilaterally revoked the obligation of paying one ounce of gold for every 35 dollars.

What is the Islamic position regarding a promissory note when one of the parties unilaterally revokes its obligation, whether it is complete or partial? That is to say, what is the Islamic ruling when a debt is unilaterally revoked or devalued?

It is not acceptable. It is a violation of the contract. If this is done with premeditation and no responsibility is accepted, it amounts to pure theft. Theft is punishable in Islam.

To use the note to transfer it to other people, falls under all the restrictions that we have expressed before, with an added element. You are dealing with the promissory note of a known thief who does not admit his guilt or past obligations.

## 5.3 Paper money with no backing, but only State legal compulsion

Finally we arrive at the money which we have today. There is no promise of payment in specie of any kind. It only has a legal value based on the obligation of the citizens of the country to accept the national currency as a means to redeem debts. This is the 'Law of Legal Tender'. It gives the State the unique ability to confiscate anyone's wealth within the nation and to pay for it in compensation with its own legal note.

Is this an acceptable means of payment in Islam?
Imam Malik said money is "any merchandise commonly accepted as a medium of exchange." This implies two things:

A) Money has to be a merchandise. Therefore it could be paper. But paper only for the value of the paper itself, not for what is written on it. Money must be something tangible ('ayn). Money cannot be a liability of any kind.
B) Money must be commonly accepted. Therefore it cannot be imposed. No-one can say it is obligatory on you. No-one can even make the Gold Dinar obligatory on the people. The Gold Dinar and the Silver Dirham become a currency out of free choice, not as the result of decree. Paper money is imposed on people. This obligation is not accepted in Islam for two further reasons:
– The fraudulent nature of the offer: they oblige you to accept something above its value (its real value is zero).

– The obligation of the offer: you are obliged to accept it whether you like it or not.

This unlawful behaviour is further reinforced by the application of State laws that restrict the use of any other merchandise as a means of payment, thus enforcing the State monopoly on the currency, particularly in regard to gold and silver. Gold and silver are either taxed, or their use is regulated and sometimes disallowed. In some extreme cases we have seen gold confiscated by law from the private citizens, as has been case in the USA.

Paper money is not valid money in Islamic Law, whether in its present form or in any of the forms in which it has existed in the past. The Shari‘ah money is the Gold Dinar and the Silver Dirham. Any merchandise commonly accepted as a medium of exchange is also accepted as a valid money in Islam.

# 6. The Islamic Mu'amalat

Islam has its own economic model. This model is not capitalist, nor is it socialist. It stems from the Qur'an and the Sunna. It has a history of 1400 years, from the beginning of Islam up until the dissolution of the Khalifate in the 20th century. This model protects and acknowledges private property as well as property of Allah (awqaf) and it is based on Islamic contractual law.

The Islamic model uses physical commodities as money. The Gold Dinar and the Silver Dirham are known as the Shari'ah currency. These two commodities (gold and silver) have a special status because they are mentioned in Qur'an and they are the measure for fundamental matters such as Zakat and issues concerning hudud. The Dinar and the Dirham are fundamental in preserving a stable currency, that is, a currency that fluctuates in value but does not suffer inflation. It does not suffer inflation because it cannot be substituted by credit money (inflated), since credit money has no validity in Islamic Law.

The minting of the Dinar and the Dirham is already a reality. Muslims across the world are starting to use them as a means of payment and to pay Zakat. A payment system based on the Dinar and the Dirham that facilitates payment across the world strictly following Islamic Law was established in 1999. It is called e-dinar. It is a practical alternative to banking transfers and allows individuals to avoid the use of credit money if they wish to. The legal implication of the development of these tools is that the case of darurah is no longer justified. There is an alternative way. It further demonstrates that there is no need to remain inside a system which is not acceptable, and that to establish the Halal is certainly possible.

The Islamic currency is one of the key elements in the reconstruction of the Islamic Mu'amalat: a complete system of trading in which Islamic Law is applicable without any distortion or omission. Such a system is a condition in order to live an Islamic life. It is an imperative to reconstruct it in our present age. The reconstruction of the Mu'amalat consists of the restoration of crucial infrastructures of trading, such as the open markets, the currency, the caravans, the guilds and the hisba. These institutions have long disappeared and are necessary to the understanding and implementation of the Islamic business contracts, Qirad and Shirkat. Without them many of the practices of the early community appear to be impossible or impractical. Thus, the restoration of the Mu'amalat must be simultaneous to the implementation of the Islamic contracts. They both need each other.

To solve a situation of darurah requires a transformation of the conditions in which we trade, which means to restore our practices. Our argument is that since we are already in the banking system and we use it, we should use what comes out of the interest of the banks to promote and encourage the restoration of the Halal alternative. We argue that the best use of the interest received from of the banks is to establish an Islamic infrastructure that will free us of our dependence on the banks.

The restoration of the Mu'amalat is not an issue for a single individual; it is an issue for a community. Muslims have to organise themselves around community leaders and in their absence they must create their own. At an international level, the creation of the World Islamic Trade Organisation in 1993 had created a platform to establish those necessary institutions of trading. The WITO created the Islamic Mint, which minted the first Dinars and Dirhams. These are now available all over the world and are minted in five countries. WITO encouraged the creation of e-Dinar which is available online (www.e-dinar.com). This website allows individuals to open accounts in Gold Dinars and make payments with the same facilities of other banking online companies,

but without being a bank. The e-dinar payment system offers an instant solution for those who want to move away from the banking system.

## 6.1 The Islamic business contracts

The regulation of the contracts plays a fundamental part of the social aspects of Islamic Law. In Islamic Law all the attention is on how the exchange of goods takes place, because it is understood that if the exchange of goods is correct, the whole edifice of trading will be correct, but if the exchange of goods is incorrect it does not matter how much we try to remedy the situation, the whole edifice of trading will remain incorrect. In Islamic Law the act of exchange of goods represents the minimal unit of trading. Thus all the regulations are guided to keep justice in every commercial and business exchange.

How to make a contract and the limitations of the different kinds of contracts is therefore very important in Islamic Law. The contract is only necessary when delayed terms are stipulated between the parties, such as a sale with delayed payment, or a rental. Also all the business transactions, such as partnerships – because they involve delayed terms – have to be written according to Islamic Law. The business contracts or those contracts where the stipulation of a business or profit is involved are two: Shirkat and Qirad. All the rest are commercial contracts. Non-commercial contracts are for example the gracious loan (ariya) or the contract of deposit (amana).

All business contracts need to be written in a form of a contract specifying the negotiable conditions. The Shirkat is an Islamic partnership, and the Qirad, also called Mudharaba, is an Islamic business loan. The Shirkat and the Qirad have certain predetermined conditions that cannot be altered; other conditions need to be negotiated by the parties.

The importance of the correctness of the business and commercial contracts is such that the use of particular types of contracts will affect how society develops. A society where unjust contracts are allowed – i.e. Riba – will produce a kind of society different from the one in which they are not allowed. This is the reason why contractual law is so important in the body of Islamic Fiqh. Almost two thirds of all Islamic Fiqh concerns trade and business.

Islamic Law, derived from the Qur'an and the Sunna of Rasulullah, sallallahu alayhi wa sallam, defines the parameters in which contracts of commercial transactions and business should take place.

**Commercial transactions** are based on the exchange of the ownership of goods. If the exchange involves delayed payment, then a contract must be written. But it is not necessary if the transaction takes place 'hand to hand'.

A commercial or business transaction is correct according to Islamic Law if it has **equity**: the value of the goods given must be equal to the countervalue of the goods received. If these values are not equal, the exchange becomes usurious.

A **business** consists of two or more commercial transactions connected for the purpose of obtaining a profit. When two or more persons associate themselves to execute a business then a contract is required between the parties involved.

A primary form of defining the **equity of a business** according to Islamic Law is that all the transactions that it involves are equitable. In addition, when a business contract is written, there are certain conditions that must be taken into account. We are going to examine the most important of these conditions.

The goods that make up the initial investment either belong to one person (no contract is necessary) or they belong to more than one person (a contract must be written). It may also be that the goods

belong to one person but that they come from a business loan – then a contract must also be written.

Therefore there are two possible basic forms of business contract:

a] the investors (everyone) transfer the ownership of the investment to themselves, all of them as a group; or

b] the investor/s (everyone) transfer the ownership of the investment to another party.

The first type of business contract is called in Arabic **‘Shirkat’** – we will also call it a partnership – and the second type of business contract is called in Arabic **‘Qirad’** – we will also call it a business loan.

### 6.1.1 Shirkat (Partnership)

Partnership is in its general meaning any association of persons who share the ownership of some goods. Therefore partnership requires co-ownership of some goods. And if these goods are invested in a business then we have the necessity of a business contract.

Co-ownership is called in Arabic ‘Shirkat Milk’. A business partnership is called in Arabic ‘Shirkat Akid’.

“Shirkat, in its primitive sense, signifies the conjunction of two or more estates, in such a manner that one of them is not distinguishable from the other. In the language of the Law, it signifies the union of two or more persons in one concern. The term ‘shirkat’, however, is extended to the contracts, although there is no actual conjunction of states, because a contract is the cause of such conjunction.”

(The Hedaya[1] , translation by Hamilton, pp 217-31)

[1]Quotations from *The Hedaya* by Burhanuddin Abu Bakr Al-Marginani, written in the eighth century, translated by Charles Hamilton under the patronage of Warren Hastings, Governor of Bengal and published in 1870 in London.

Shirkat is lawful. In the time of the Prophet, sallallahu alayhi wa sallam, men were accustomed to practicing partnership. In his Muwatta, Malik said:

"The way of doing things among us is that there is no harm in partnership (ash-shirka), transferring responsibility to a deputy (at-tawliyah) and revocation (al-iqalah) when dealing with food and other things, whether or not possession was taken, when the transaction is with cash, and there is no profit, loss or deferment of its price. If profit, loss or deferment or the price form one of the two enters any of these transactions, it becomes a sale which is made Halal, and made Haram by what make sale Haram, and it is not partnership, transference of responsibility to a deputy, or revocation."

**Shirkat** is of two kinds depending on how it originates:

**Shirkat Milk**, or partnership by the right of property, and
**Shirkat Akid**, or partnership by a business contract.
The one that we are interested in exploring is the business contract of Shirkat, which is commonly called Shirkat Akid or business partnership
The most significant conditions are:

- **The Principle of Takafu' (Proportionality)**

The share of a partnership where all the partners work and put in capital depends on the different amounts of capital invested. If there are differences in capital among the partners but they all work the same amount, then the lesser investor can be compensated for his extra work.

"I have heard from Malik that partnership is not permissible unless there exists a balance (takafu') in the capitals."[2]

[2]Sahnun, Mudawwana, 12: 41.

- **The Necessity to Participate in the Work**

A partnership assumes the participation of all its members in the actual work. An association in which all the work is assigned to one partner, while the other provides some necessary capital or equipment, but no work, is not a valid partnership. The non-working party is not entitled to any share of the income and can claim only the return of his investment and, if it happened to be in a form other than cash, some equitable rental fee for its use.

Surplus capital cannot be used as investment in a partnership without physically participating in the work of the business. So you cannot have a capitalist investing in the production made by other people. The only formula for a silent investor is a business loan or Qirad. In a partnership all the partners have to work, they are all equally owners and therefore equally responsible.

I said: “What is your opinion of an arrangement in which I place a person in a stall and say to him: ‘I will accept the goods and you will do the work on the condition that what ever God grants us will be shared between us equally?’” He said: ”According to Malik, this is not permissible.”[3]

I said: “What is your opinion of a partnership between three people in which one provides the millstone, the other the house, and the other the work-animal, on the condition that the owner of the animal does all the work?” He said: “The entire proceeds of the work are to go to the owner of the animal who executes the work, and he is obligated to pay the rental fee for the millstones and house.” I said: “Is this also the case even if he does not earn anything?” He said “Yes, even if he does not earn anything.”[4]

---

[3]Sahnun, Mudawwana, 12: 41.
[4]Sahnun, Mudawwana, 12: 45.

Ibn Qasim rejects the validity of a partnership based in cash only which stipulates that all the work be done by only one of the partners. He explains his rejection as follows:

"The basis for this is that according to Malik, a partnership is not permissible unless they combine in its work proportionally to their respective shares in the joint capital."[5]

The results are manifold: The first one is quite obvious which is that there cannot be capitalist investors using their capital to benefit from the manufacturing work of other people without occupying themselves in the work. The second one is the fact that all the owners in a co-ownership can exercise their ownership with identical status independent of the share that they may have in the business. Both principles show the fallacy of the Stock Exchange.

The establishment of a Stock Exchange is a result of the previous creation of a false concept of ownership. This false concept of ownership is based on what they call "majority ownership". On this basis you can be the owner of a company by contract despite not having any executive decision over your property. Ownership is declared in a piece of paper, but the same piece of paper guarantees that you cannot decide – therefore you cannot own the property. This is the falsehood of this kind of contract. The contract of shareholding with majority ownership is according to Islamic Law not acceptable and is considered to be a form of cheating.

## The Essence of Ownership

Ownership is not just a document that says you are the owner of something. Ownership means you are entitled to and also capable of deciding how to dispose of your property. Otherwise you are not the owner. Decision over a property is the essence of ownership.

---

[5] Sahnun, Mudawwana, 12: 60.

Ownership exists every time something is used or consumed, although ownership is legally regulated only when scarcity appears. There were no regulations for fishing in the sea, but as the fleets increased and the fish became scarce, the regulation of ownership became necessary. Everybody disposes freely of air to breath, but the use of the flight paths of planes became regulated. Before regulation there was also ownership, because when a plane used a flight path nobody else could use it. That was effectively ownership.

Therefore, explicitly regulated or not, ownership has an existential reality connected to the use of something. Ownership consists of the capacity to use something. To hold the capacity to decide is effectively ownership. Modern commercial legislation allows for a type of ownership disconnected from the capacity to decide. This leads to the idea of an ownership exclusively defined by the title but without decision-making powers. This is not possible in Islam since the title and decision-making powers are bound together.

When ownership is exercised individually, there is no difficulty in understanding how the decision is made. But what happens when there is collective ownership? If they are all owners they must all own. Therefore, in Islamic law, the co-owners submit to these two principles.

1. All the co-owners have the same status of decision, regardless of their participation in the property.
2. The results of the business are shared among the co-owners in proportion to their participation in the business as established in the contract.

If the first condition is not fulfilled, then the co-owners are no longer owners, and someone is usurping the shared ownership. Islamic law demands that every time there is a commercial agreement between two or more parties, a contract must be written. This contract is what constitutes the private decision of the business. The business contract clearly defines in advance the nature of the business: who are the

investors, who is the agent (if there is one), the quantity of the investment, the objective of the business, its duration, and the sharing of its results. Therefore, when you sign the contract, you know what you are participating in. When you invest, you know what you are investing in. Now, what you have in modern investment is an agreement which is not considered a contract within Islamic law. Rather, the investor lends the money to an unknown owner, to an unknown business, with no fixed duration, whose profits or dividends are decided by that unknown owner. This is all done under the falsehood of majority ownership.

## The false concept of majority ownership

This false concept was brought about for the purpose of the creation of a mechanism of control and manipulation which ended up being the establishment of the Stock Exchange. It is based on the principle that whoever has a simple majority of the shares of a company owns the company. This system allows the control of great portions of the market by very few people. For example: Mr Stone who owns 51% of company A has control of the company. If he uses the capital of company A to buy 51% of company B, he will have total control of company B although he owns only approximately 1/4 of its capital. If he then uses the capital of company B to buy 51% of company C, he will have total control of C, although he owns only 1/8 of the capital. Mr Stone can then buy a company D, E, F ... in the same way.

The false concept of majority ownership has enabled the usurping of the legal ownership of millions of minority co-owners. Through this procedure, Mr Stone has power over an enormous amount of capital that is not his. He can decide what the results, now called dividends, are. But dividends are not the same as the results of the business. The company must be liquidated in order to know the results of the business. The system of majority ownership makes these companies exist without results, without liquidation. Because the majority owner can decide how much is going to be re-invested and how much will be paid out as dividends, you are tied to the company against your will.

In Islamic Law, you cannot force any investor to re-invest without his approval. The results, therefore, must be completely shared, by the liquidation of a company after the period stipulated in the contract as the duration of the company. If they all agree to continue they can continue, if not, the company is liquidated to start again with a new contract. Thus ownership is always protected. The majority ownership system only protects the company ownership of the majority owners, but does not protect the ownership of the rest of the co-owners.

### 6.1.2 Qirad (business loan)

Qirad is usually referred to with three different words:

Mudharaba (originated in Iraq); this is what the people of Iraq called Qirad; according to al-Sarakhsi, this word is derived from the expression 'al-darb fi al-ard' which means 'making a journey'. This term is used because the agent-manager has the right to claim the profit by virtue of his effort and work. Indeed he is regarded as the investor's associate in matters relating to the profit and capital used on the journey and for arrangements or ancillary expenses. The investor is entitled to receive a share of the profit on account of investing with his capital.

Qirad or Muqaradah (originated in Madinah); this is what it was called in Madinah. The word comes from the Arabic 'qard', which means the surrender of rights over capital by the owner to the user of the capital [a loan]. Agent is in Arabic 'al-'amil' and the investor in Arabic is 'sahibul-mal' or 'rabbul-mal'-

Commenda (originated in Medieval Europe), from the contract of accomendacio of the jus commune. The investor was called commendator and the agent was called tractator. This contract was introduced into Europe, especially Southern Europe through the Italian seaports of the late tenth and early eleventh centuries of the christian calendar.

Ibn Rushd said;

“There is a consensus of opinion among the Muslims with regard to the legality of Qirad. It was in vogue in the pre-Islamic period and Islam adopted it. There is a consensus of opinion that it consists in giving some capital by one person to another for business. The user of capital receives an agreed proportion of the profit, i.e. any proportion they may agree, one-third, one-forth, or even one-half.”
(Ibn Rushd, *Bidayat Mujtahid wa Nihayatul-Muqtasid*, Cairo, 1329, p. 205)

The Prophet, sallallahu alayhi wa sallam, worked as an agent for Khadijah before he married her.

All the Muslim jurists agree on its legitimacy as a form of business transaction and they formed this opinion on the basis of its wide practice by the Companions of the Prophet, sallallahu alayhi wa sallam, during his lifetime and after. The Prophet, sallallahu alayhi wa sallam, knew it and approved of it.

The main conditions of Qirad are:

1. The agent of Qirad who is asked to buy credit or make an exchange and then use the funds, has the right to charge for that work with a salary, without losing his rights of a part of the profit of the loan.

2. The agent can not be obliged to do a manufacturing work, such as sewing or embroidering. Qirad is not for manufacturing, it is only for trading.

3. Every mutually consented loan, even in the form of Qirad, in which funds are destined to pay for a merchandise that the lender knows have been already bought, is not a Qirad. It is a ordinary gracious loan.

4. The agent is free to buy and sell whatever he wants, and in the place and in the time that he wants.

5. Qirad is not for time. It is not permitted for the agent to stipulate that he use the Qirad for a certain number of years and that it not be taken back from him during that time.

6. Guarantees in Qirad are void. The stipulation of guarantee in Qirad is null and void. The investor is not permitted to stipulate conditions about his principal other than the conditions on which Qirad is based.

# 7. Conclusion: What to do?

From an Islamic perspective, what can a person do with the interest he has earned on his deposit? The problem is not just the interest, the problem is to have the bank account in the first place. The solution is not therefore to abandon the interest to the bank, that does not solve the problem. The solution must come from changing the circumstances in which we find ourselves forced to use the Haram: darurah.

We are against the idea of perpetuating the status of darurah as is done by Islamic Banks. Our position is that we Muslims must take an active role in changing the situation we find ourselves in. Therefore, our proposal is to use the money of the interest in order to promote the Halal alternative.

The first step should be to allocate those funds emerging from the interest into special Dinar accounts and to place them under an organisation that will undertake the restoration of the infrastructure of our Islamic Mu'amalat. Those funds will allow us to establish the Islamic currency and to gradually enable us to abandon the banking system. At the same time it will allow us to build trading infrastructures such as markets that will allow us to further disengage from other capitalist institutions.

Overall the idea is that we as Muslims have a duty to change the situation. We all know that what we are doing is Haram. We cannot simply remain for ever under the auspices of darurah, because darurah is only a temporary measure. Our objective must be to use all our resources to eliminate our dependency on the banking system one step at a time.

However difficult the prospect of abandoning banking might look, we must remember that we do this fisabilillah. Allah has declared war on

Riba, our obligation is to abandon it, since it is indeed more difficult to remain in it than to get out of it.

## 7.1 Practical Steps

The aim of any attempt to establish the Gold Dinar as a currency must be, from an Islamic perspective, the establishment of Zakat. Zakat is one of the main pillars of Islam which at present has been corrupted by the introduction of alien means belonging to the Riba economy.

**First step:** Contact a responsible company that can help you to purchase physical Dinars and Dirhams. If you do not have access to Dinars and Dirhams, buy any form of gold or silver coins. You can also buy gold or silver bullion. You can take delivery of the bullion or you can deposit it with a reputable company in an allocated or non-allocated deposit.

**Second step:** Open a Dinar account in e-dinar (www.e-dinar.com). Alternatively you can open a bullion account in a non-banking repository which offers payment facilities such as e-gold or e-bullion. This type of gold account will allow you to operate with an internationally accepted currency such as gold and save your money from inflation.

**Third step:** Invite your suppliers and your customers to open similar Dinar and Dirham accounts (or gold and silver accounts) and offer them to pay and be paid using gold and silver. The price of gold and silver is daily determined and is easily accessible through newspapers or through the Web. E-dinar offers daily exchange rates for the Dinar and Dirham in all major currencies.

**Fourth step:** Establish a network of shops and users of the Dinar and Dirham in your community and publish a newsletter listing all participants, regularly upgrading it with new members who accept

Dinar and Dirham. Zakat should then be collected and distributed using Dinar and Dirham.

**Fifth step:** Establish an Islamic Qirad Fund and invite users to invest in the Fund. The fund will be dedicated to financing trading activities only according to the rules of Qirad. The benefits will be shared among the investors according to the stipulated conditions of the contract.

**Finally,** we need to affirm that the interest should not be given to the bank under any circumstances. Abandoning the interest does not make the transaction Halal and does not help us to change the situation.

May Allah gives us the strength and the wisdom to abandon Riba and to establish His Deen in our times. Amin.